



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, शनिवार, 7 अगस्त, 2010 / 16 श्रावण, 1932

हिमाचल प्रदेश सरकार

HIGH COURT OF HIMACHAL PRADESH, SHIMLA - 171 001

NOTIFICATION

Shimla, the 1st July, 2010

No.HHC/GAZ/14-253/2002.—Hon'ble the Chief Justice has been pleased to grant 8 days' earned leave *w.e.f.* 2-7-2010 to 9-7-2010 with permission to suffix second Saturday and Sunday falling on 10-7-2010 and 11.7.2010 in favour of Shri Gaurav Mahajan, Civil Judge (Jr. Division)-*cum*-JMJC, Manali.

Certified that Shri Mahajan is likely to join the same post and at the same station from where he proceeds on leave, after expiry of the above period of leave.

Also certified that Shri Mahajan would have continued to hold the post of Civil Judge (Jr. Division)-*cum*-JMJC, Manali, but for his proceeding on leave for the above period.

By order.

Sd/-

Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA - 171 001**NOTIFICATION***Shimla, the 1st July, 2010*

No.HHC/Admn.16 (7)74-IX.—Hon'ble the Chief Justice, in exercise of the powers vested in him U/S 139(b) of the Code of Civil Procedure, 1908, U/S 297(b) of the Code of Criminal Procedure, 1973 and Rule 5(vi) of the H.P. Oath Commissioners (Appointment & Control) Rules, 2007 has been pleased to appoint Sh. Vishal Sood and Sh. Daljit Singh, Advocates, Palampur, as Oath Commissioners at Palampur, for a period of two years, with effect from 4.8.2010 for administering oaths and affirmations on affidavits to the deponents, under the aforesaid Codes and Rules.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA 171 001**NOTIFICATION***Shimla, the 2nd July, 2010*

No.HHC/GAZ/14-258/2003.—Hon'ble the Chief Justice has been pleased to grant 5 days earned leave w.e.f. 5.7.2010 to 9.7.2010 with permission to prefix Sunday falling on 4th July, 2010 and to suffix Saturday and Sunday falling on 10th & 11th July, 2010 in favour of Shri Avinash Chander, Civil Judge (Jr. Division)-cum-JMIC, Karsog.

Certified that Shri Avinash Chander is likely to join the same post and at the same station from where he proceeds on leave, after expiry of the above period of leave.

Also certified that Shri Avinash Chander would have continued to hold the post of Civil Judge (Jr. Division)-cum-JMIC, Karsog but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA – 171 001**NOTIFICATION***Shimla, the 2nd July, 2010*

No. HHC/GAZ/14-160/84-I.—Hon'ble the Chief Justice has been pleased to grant ex post facto sanction of 13 days commuted leave w.e.f. 12.12.2009 to 24.12.2009 with permission to suffix gazetted holiday fallen on 25.12.2009 in favour of Shri C.L. Kochhar, Additional District and Sessions Judge, Shimla.

Certified that Shri Kochhar has joined the same post and at the same station from where he proceeded on leave, after expiry of the above period of leave.

Also certified that Shri Kochhar would have continued to hold the post of Additional District and Sessions Judge, Shimla, but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA - 171 001

NOTIFICATION

Shimla the 3rd July, 2010

No.HHC/Admn.6(23)/74-XIII.—Hon'ble the Chief Justice in exercise of the powers vested in him under Rule 1.26 of H.P. Financial Rules, 1971, Volume-I, has been pleased to declare the Civil Judge (Jr. Division)-cum-JMIC, Jawali as Drawing and Disbursing Officer in respect of the Courts of Civil Judge (Sr. Division)-cum-JMIC(I), Nurpur and Civil Judge (Sr. Division)-cum-JMIC(II), Nurpur and also the Controlling Officer for the purpose of T.A. etc. in respect of Class-II, III and IV establishments attached to the aforesaid Court with effect from 28.6.2010 to 11.7.2010 and thereafter the Civil Judge (Jr. Division)-cum-JMIC(II), Nurpur has been declared as Drawing and Disbursing Officer as well as Controlling Officer in respect of establishment attached to the Court of Civil Judge (Sr. Division)-cum-JMIC(I), Nurpur w.e.f. 12.7.2010 to 25.7.2010 or till Shri R.K. Tomar returns from leave under Head "2014-Administration of Justice".

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA – 171 001

NOTIFICATION

Shimla, the 1st July, 2010

No.HHC/Admn.2(21)/82-III.—In the interest of administration, the following officials of the Subordinate Judiciary who have joined in this Registry as Clerks are posted in the Judicial Branch with immediate effect :-

1. Ms. Shakuntla Sharma, Clerk;
2. Smt. Anuradha Bhatt, Clerk;
3. Smt. Sanjeeta Chauhan, Clerk.

By order,
Sd/-
Registrar General.

उच्चतर शिक्षा विभाग**अधिसूचना**

शिमला-2, 5-04-2010

संख्या: ई.डी.एन.-ए0-ख (1)-1/2006.—हिमाचल प्रदेश की राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, अधिसूचना संख्या ख (15)-2/92-शिक्षा-क-1, तारीख 24-8-1992 द्वारा अधिसूचित हिमाचल प्रदेश, उच्चतर शिक्षा विभाग, प्रधानाचार्य (स्कूल संवर्ग), वर्ग-I (राजपत्रित) के भर्ती और प्रोन्नति नियम, 1992 तथा अधिसूचना संख्या ईडीएन0-ए-क (1)-1/2006, दिनांक 10 अगस्त, 2007 द्वारा संशोधित व अधिसूचित (प्रथम संशोधन) नियम, 2007 का और संशोधन करने के लिए निम्नलिखित नियम बनाती हैं, अर्थात्:-

1. संक्षिप्त नाम और प्रारम्भ.—(1) इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश उच्चतर शिक्षा विभाग, प्रधानाचार्य (स्कूल संवर्ग), वर्ग-I, (राजपत्रित) भर्ती और प्रोन्नति (द्वितीय संशोधन) नियम, 2010 है ।

(2) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होंगे ।

2. उपाबन्ध-क का संशोधन.—हिमाचल प्रदेश उच्चतर शिक्षा विभाग विभाग, प्रधानाचार्य (स्कूल संवर्ग), वर्ग-I (राजपत्रित) के भर्ती और प्रोन्नति (प्रथम संशोधन) नियम, 2007 के उपाबन्ध-क में स्तम्भ 11 के सामने विद्यमान उपबन्धों के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:-

- (i) पचास प्रतिशत, मुख्याध्यापकों में से प्रोन्नति द्वारा, जिनका तीन वर्ष का नियमित सेवाकाल या ग्रेड में की गई लगातार तदर्थ सेवा, यदि होई हो, को सम्मिलित करके तीन वर्ष का नियमित सेवाकाल हो, ऐसा न होने पर मुख्याध्यापकों में से प्रोन्नति द्वारा, जिनका मुख्याध्यापक/प्रशिक्षित स्नातक अध्यापक का संयुक्ततः पन्द्रह वर्ष का नियमित सेवाकाल या की गई लगातार तदर्थ सेवा का सम्मिलित, करके पन्द्रह वर्ष का संयुक्ततः नियमित सेवाकाल हो, जिसमें मुख्याध्यापक के रूप में दो वर्ष का सेवाकाल होना अनिवार्य है ।
- (ii) पचास प्रतिशत, स्कूल प्रवक्ता संवर्ग से संबंधित स्कूल प्रवक्ताओं (वर्ग-II राजपत्रित) में से प्रोन्नति द्वारा जिनका स्कूलों में नियमित प्रवक्ता के रूप में आठ वर्ष का अध्यापक अनुभव हो या ग्रेड में की गई लगातार तदर्थ सेवा यदि कोई हो, को सम्मिलित करके आठ वर्ष का नियमित सेवाकाल हो;

परन्तु प्रोन्नति के प्रयोजन के लिए प्रत्येक कर्मचारी को, जनजातीय/ दुर्गम क्षेत्रों में पद (पदों) की ऐसे क्षेत्रों में पर्याप्त संख्या की उपलब्धता के अधधीन, कम से कम एक कार्यकाल तक सेवा करनी होगी:

परन्तु यह और कि उपर्युक्त परन्तुक (1) उन कर्मचारियों के मामले में लागू नहीं होगा जिनकी अधिवर्षिता के लिए पांच वर्ष या उससे कम की सेवा शेष रही हो:

परन्तु यह और भी कि उन अधिकारियों/कर्मचारियों को, जिन्होंने जनजातीय/ दुर्गम क्षेत्र में कम से कम एक कार्यकाल तक सेवा नहीं की है, ऐसे क्षेत्र में उसके अपने संवर्ग (काडर) में सर्वथा वरिष्ठता के अनुसार स्थानान्तरण किया जाएगा ।

स्पष्टीकरण I.—उपर्युक्त परन्तुक के प्रयोजन के लिए जनजातीय/ दुर्गम क्षेत्रों में "कार्यकाल" से साधारणतया तीन वर्ष की अवधि या प्रशासनिक अपेक्षाओं और कर्मचारी द्वारा किए गए कार्य को ध्यान में रखते हुए ऐसे क्षेत्रों में तैनाती की इससे कम अवधि अभिप्रेत होगी ।

स्पष्टीकरण II.—उपर्युक्त परन्तुक के प्रयोजन के लिए जनजातीय/दुर्गम क्षेत्र निम्न प्रकार से होंगे:—

1. जिला लाहौल एवं स्पिति ।
2. चम्बा जिला का पांगी और भरमौर उप मण्डल ।
3. रोहडू उप मण्डल का डोडरा क्वार क्षेत्र ।
4. जिला शिमला की रामपुर तहसील का पन्द्रह बीस परगना, मुनीष, दरकाली और ग्राम पंचायत काशापाट ।
5. कुल्लू जिला का पन्द्रह बीस परगना ।
6. कांगड़ा जिला के बैजनाथ उप मण्डल का बड़ा भंगाल क्षेत्र ।
7. जिला किन्नौर ।
8. सिरमौर जिला में उप तहसील कमरु के काठवाड़ और कोरगा पटवार वृत्त, रेणुकाजी तहसील के भलाड़-भलौना और सांगना पटवार वृत्त और शिलाई तहसील का कोटा पाब पटवार वृत्त ।
9. मण्डी जिला में करसोग तहसील का खन्योल-बगड़ा पटवार वृत्त, बाली चौकी उप तहसील के गाड़ा गोसाई, मठयानी, घनयाड़, थाची, बागी, सोमगाड़ और खोलानाल, पद्धर तहसील के झारवाड़, कुटगढ़, ग्रामन, देवगढ़, ट्रेला, रोपा, कथोग, सिल्ह-भड़वानी, हस्तपुर, घमरेड़ और भटेढ़ पटवार वृत्त, थुनाग तहसील के चियूणी, कालीपार, मानगढ़, थाच-बगड़ा उत्तरी मगरू और दक्षिणी मगरू पटवार वृत्त और सुन्दरनगर तहसील का बटवाड़ा पटवार वृत्त ।

(1) प्रोन्नति के सभी मामलों में पद पर नियमित नियुक्ति से पूर्व सम्भरक (पोषक) पद में की गई लगातार तदर्थ सेवा, यदि कोई हो, प्रोन्नति के लिए इन नियमों में यथाविहित सेवाकाल के लिए, इस शर्त के अधीन रहते हुए गणना में ली जाएगी, कि सम्भरक प्रवर्ग में तदर्थ नियुक्ति/प्रोन्नति, भर्ती और प्रोन्नति नियमों के उपबन्धों के अनुसार चयन की उचित स्वीकार्य प्रक्रिया को अपनाने के पश्चात् की गई थी:

परन्तु उन सभी मामलों में जिनमें कोई कनिष्ठ व्यक्ति सम्भरक पद में अपने कुल सेवाकाल (तदर्थ आधार पर की गई तदर्थ सेवा सहित, जो नियमित सेवा/नियुक्ति के अनुसरण में हो) के आधार पर उपर्युक्त निर्दिष्ट उपबन्धों के कारण विचार किए जाने का पात्र हो जाता है, वहां अपने-अपने प्रवर्ग/पद/कांडर में उससे वरिष्ठ सभी व्यक्ति विचार किए जाने के पात्र समझे जाएंगे और विचार करते समय कनिष्ठ व्यक्ति से ऊपर रखे जाएंगे:

परन्तु यह और कि उन सभी पदधारियों की, जिन पर प्रोन्नति के लिए विचार किया जाना है, की कम से कम तीन वर्ष की न्यूनतम अर्हता सेवा या पद के भर्ती और प्रोन्नति नियमों में विहित सेवा, जो भी कम हो, होगी:

परन्तु यह और भी कि जहां कोई व्यक्ति पूर्वगामी परन्तुक की अपेक्षाओं के कारण प्रोन्नति किए जाने सम्बन्धी विचार के लिए अपात्र हो जाता है, वहां उससे कनिष्ठ व्यक्ति भी ऐसी प्रोन्नति के विचार के लिए अपात्र समझा जाएगा/समझे जाएंगे ।

स्पष्टीकरण.—अंतिम परन्तुक के अन्तर्गत कनिष्ठ पदधारी प्रोन्नति के लिए अपात्र नहीं समझा जाएगा यदि वरिष्ठ अपात्र व्यक्ति भूतपूर्व सैनिक है जिसे डिमोबीलाइज्ड आमर्ड फोर्सिज परसोनल (रिजर्वेशन ऑफ वैकेन्सीज इन हिमाचल स्टेट नॉन टैक्नीकल सर्विसीज) रूल्ज, 1972 के नियम-3 के उपबन्धों के अन्तर्गत भर्ती किया गया है और इनके अन्तर्गत वरीयता लाभ दिए गए हों या जिसे एक्स सर्विसमैन (रिजर्वेशन ऑफ

वैकेन्सीज इन दी हिमाचल प्रदेश टैक्नीकल सर्विसीज) रूलज, 1985 के नियम-3 के उपबन्धों के अन्तर्गत भर्ती किया गया हो और इनके अन्तर्गत वरीयता लाभ दिए गए हों।

(2) इसी प्रकार स्थाईकरण के सभी मामलों में ऐसे पद पर नियमित नियुक्ति से पूर्व की सम्भरक पद पर की गई लगातार तदर्थ सेवा, यदि कोई हो, सेवाकाल के लिए गणना में ली जाएगी, यदि तदर्थ नियुक्ति/प्रोन्नति, उचित चयन के पश्चात् और भर्ती और प्रोन्नति नियमों के उपबन्धों के अनुसार की गई थी:

परन्तु की गई उपर्युक्त निर्दिष्ट तदर्थ सेवा को गणना में लेने के पश्चात् जो स्थाईकरण होगा उसके फलस्वरूप पारस्परिक वरीयता अपरिवर्तित रहेगी।

आदेश द्वारा,
हस्ता/-
प्रधान सचिव।

[Authoritative English text of this Department Notification No. EDN.-A-Ka (1)-1/2006, dated _____, 2009 required under clause (3) of Article 348 of the Constitution of India].

HIGHER EDUCATION DEPARTMENT

(Education-B)

NOTIFICATION

Shimla-171002, 5-04- 2010

No. EDN.-A-Ka (1)-1/2006.—In exercise of the powers conferred by proviso to Article 309 of the Constitution of India, the Governor, Himachal Pradesh, in consultation with the Himachal Pradesh Public Service Commission, is pleased to make the following Rules, further to amend the Recruitment and Promotion Rules for the post of Principal (School Cadre), Class-I (Gazetted) in the Higher Education Department, Himachal Pradesh notified vide Notification No. Kha (15)-2/92-Edu-A-I, dated 24.8.1992 and amended vide notification No.-EDN-A-Ka (1)-1/2008, dated 10th August, 2007; namely:-

1. Short Title and Commencement.— (1) These rules may be called the Himachal Pradesh, Higher Education Department, Principal (School Cadre) Class-I (Gazetted) Recruitment and Promotion (Second Amendment) Rules, 2010.

(2) These rules shall come into force from the date of publication in the Rajpatra, Himachal Pradesh.

2. Amendment of Annexure-“A”.— In Annexure-“A” to the Himachal Pradesh Higher Education Department, Principal (School Cadre) Class-I (Gazetted) Recruitment and Promotion (First Amendment) Rules, 2007 for the existing provision against Col. No. 11 the following shall be substituted, namely;

- (i) 50% by promotion from amongst the Headmasters with three years regular service or regular combined with continuous adhoc service, rendered, if any, in the grade failing which from amongst the Headmasters with 15 years regular service or regular

combined with continuous adhoc service rendered, if any, as Headmaster/TGT combined out of which 02 years service as Headmaster is essential.

- (ii) 50% by promotion from amongst School Lecturers (Class-II Gazetted) belonging to School Lecturers cadre with eight years teaching experience in Schools as Lecturer on regular basis or regular combined with continuous adhoc service rendered, if any, in the grade.

(1) Provided that for the purpose of promotion every employee shall have to serve atleast one term in the Tribal/Difficult areas subject to adequate number of post (s) available in such areas;

Provided further that the proviso (1) supra shall not be applicable in the case of those employees who have five years or less service, left for superannuation.

Provided further that Officers/Officials who have not served atleast one tenure in Tribal/difficult area shall be transferred to such area strictly in accordance with his/her seniority in the respective cadre.

Explanation I.—For the purpose of proviso (1) supra the “term” in Tribal/Difficult areas shall mean normally three years or less period of posting in such areas keeping in view the administrative requirements and performance of the employee.

Explanation II.— For the purpose of proviso (1) supra the Tribal/Difficult Areas shall be as under:-

1. District Lahaul & Spiti.
2. Pangi and Bharmour Sub Division of Chamba District.
3. Dodra Kwar Area of Rohru Sub Division.
4. Pandrah Bish Pargana, Munish Darkali and Gram Panchayat Kashapat, Gram Panchayats of Rampur Tehsil of District Shimla.
5. Pandrah Bish Pargana of Kullu District.
6. Bara Bhangal Areas of Baijnath Sub Division of Kangra District.
7. District Kinnaur.
8. Kathwar and Korga Patwar Circles of Kamrau Sub Tehsil, Bhaladh Bhalona and Sangna Patwar Circle of Renukaji Tehsil and Kota Pab Patwar Circle of Shillai Tehsil, in Sirmour District.
9. Khanyoi-Bagra Patwar Circle of Karsog Tehsil Gada-Gusaini, Mathyani, Ghanyar, Thachi, Baggi, Somgad and Kholanal of Bali-Chowki Sub Tehsil, Jharwar, Kutgarh, Graman, Devgarh, Trailla, Ropa, Kathog, Silh-Badhwani, Hastpur, Ghamrehar and Bhatehar Patwar

Circle of Padhar Tehsil, Chiuni, Kalipar, Mangarh, Thach-Bagra, North Magru and South Magru Patwar Circles of Thunag Tehsil and Batwara Patwar Circle of Sunder Nagar Tehsil in Mandi District.

(1) In all cases of promotion, the continuous adhoc service rendered in the feeder post, if any, prior to regular appointment to the post shall be taken into account towards the length of service as prescribed in these rules for promotion subject to the condition that the adhoc appointment/promotion in the feeder category had been made after following proper acceptable process of selection in accordance with the provision of Recruitment and Promotion Rules:-

Provided that in all cases where a junior person becomes eligible for consideration by virtue of his/her total length of service (including service rendered on adhoc basis, followed by regular service /appointment in the feeder post in view of the provision referred to above) all persons senior to him/her in the respective category/post/cadre shall be deemed to be eligible for consideration and placed above the junior person in the field of consideration;

Provided further that all incumbents to be considered for promotion shall possess the minimum qualifying service of at least three years or that prescribed in the Recruitment and Promotion Rules for the post, whichever is less;

Provided further that where a junior person becomes ineligible to be considered for promotion on account of the requirements of the preceding proviso, the person(s) junior to him/her shall also be deemed to be ineligible for consideration for such promotion.

Explanation.—The last proviso shall not render the junior incumbent (s) ineligible for consideration for promotion if the senior ineligible person (s) happened to be Ex- Servicemen recruited under the provision of Rule 3 of Demobilized Armed Forces Personnel (Reservation of vacancies in Himachal State Non-Technical Services) Rules, 1972 and having been given the benefit of seniority there under or recruited under the provisions of Rule 3 of the Ex-Servicemen (Reservation of Vacancies in the Himachal Pradesh Technical Services) Rules, 1985 and having been given the benefit of seniority thereunder.

(2) Similarly, in all cases of confirmation, continuous adhoc service rendered on the feeder post, if any, prior to the regular appointment against such post shall be taken into account towards the length of service, if the adhoc appointment/promotion had been made after proper selection and in accordance with the provision of the R & P Rules;

Provided that inter-se-seniority as a result of confirmation after taking into account, adhoc service rendered as referred to above shall remain unchanged.

By orders,
Sd/-
Principal Secretary.

LANBOUR AND EMPLOYMENT DEPARTMENT

Ref.42/08

MS. SHANTA SHARMA V/S M/S PASTRY GARDEN, THE MALL, SHIMLA

30.06.2010

Present: Petitioner with counsel Sh. R.K. Chawa.
Ms.Rani Thakur, Advocate for respondent.

As per separate statement of the petitioner, on file, a compromise has been effected between the parties and as per the same, she has settled her claim in full & final as involved in the claim petition, filed by her, consequently upon the reference, having been made to this court by the appropriate government.

I view of the statement of the petitioner, her claim petition stands disposed of as compromised. Resultantly, the reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced
30.06.2010

*Presiding Judge,
Labour Court, Shimla.*

Ref.4/2010
8.5.2010

SMT GURMEET KAUR V/S FACTORY MANAGER, M/S S.S.I.P.L RETAIL LTD DISTT SIRMOUR.

8.5.2010:-

Present:- None for the petitioner.
Sh.Sitender Singh Malik, Manager Personnel & HR present alongwith Shri Navlesh Verma, Advocate for the respondent.

Be awaited.

*Presiding Judge,
Labour Court, Shimla.*

8.5.2010:- Case called again.

Present:- None for the petitioner.
Sh.Sitender Singh Malik, Manager Personnel & HR present alongwith Shri Navlesh Verma, Advocate for the respondent.

Although, notice was sent to the petitioner but there is nothing on record which could go to show that she has been served. However, it has been sated before this Court by Shri Satinder Singh Malik, authorized person, on behalf of the respondent company that already, the claim of the petitioner stands settled as full in final. On having considered his such version, made before this Court, I proceed to record his statement in this respect, on oath, which has been recorded accordingly.

From the statement of Shri Sitender Singh Malik, made on oath, it has been highlighted that he has been authorized by the respondent company to appear before this court vide Ex.RA and that as per Ex. RB, the claim of the petitioner has been settled in full & final.

I am satisfied from the statement, having been made by Shri Satinder Singh Malik, on oath, before this Court as well as Ex.RB, that already, the claim of the petitioner, as has been referred to this Court by the Labour Commissioner, by way of reference, has been settled. In these circumstances, I am of the firm opinion that the reference, in question, can be answered despite the fact that the petitioner is not present before this Court.

Consequently, for what has been stated and observed above, the claim of the petitioner, as referred to this Court by the Labour Commissioner by making the references, stands disposed of as having been compromised. Resultantly, the reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
8.6.2010

*Presiding Judge,
Labour Court, Shimla.*

Ref.5/2010
5.6.2010

SH SARAN DASS V/S G.M.M/S GAWTHANI HYDRO ELECTRIC LTD , SHIMLA

5.6.2010:- Case called again.
Present:- None for the petitioner.

Shri Rakesh Kumar, duly authorized by respondent company as per letter dated 4.6.2010, filed in this Court, has appeared on behalf of the respondent.

It has been stated by Rakesh Kumar, that the petitioner has already effected a compromise with the respondent company and as per that compromise, he has settled his claim by way of full & final.

I have considered the statement as made, at bar, by said Rakesh Kumar as well as attested copy of the statement, made by the petitioner (Saran Dass) on non-judicial paper, where in he has mentioned that he has settled his claim with the company in full & final. Consequently, I proceed to record the statement of Shri Rakesh Kumar, separately Statement recorded.

From the statement made by Shri Rakesh Kumar, coupled with Ex.RB, the statement made by the petitioner (Saran Dass). On non-judicial paper. I am satisfied that a lawful Compromise has been effected between the parties, out of court, and pursuant to the same, the petitioner has settled his claim in full & final. In these circumstances, I am of the firm opinion that there is no need to issue notice to the petitioner who, for today, has not been served and not present.

Accordingly, no further action is required to be taken by this Court, consequent, upon the reference, having been made to this Court, by Labour Commissioner, in respect of the claim of petitioner, stated therein. Thus, the claim of the petitioner stands disposed of as compromised with the result, the reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
5.6.2010

*Presiding Judge,
Labour Court, Shimla.*

MS. GEETA SHARMA V/S M/S PASTRY GARDEN, THE MALL, SHIMLA

30.06.2010

Present: Petitioner with counsel Sh. R.K. Chawa.
Ms.Rani Thakur, Advocate for respondent.

As per separate statement of the petitioner, on file, a compromise has been effected between the parties and as per the same, she has settled her claim in full & final as involved in the claim petition, filed by her, consequently upon the reference, having been made to this court by the appropriate government.

I view of the statement of the petitioner, her claim petition stands disposed of as compromised. Resultantly, the reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced
30.06.2010

*Presiding Judge,
Labour Court, Shimla.*

Ref.45/2010

SH RAKESH KUMAR V/S M.D.M/S BECKON BUSINESS SERVICES PVT LTD, PARWANOO & OTHERS

2.6.2010:-

Present:- Petitioner in person.
Sh Ritesh for respondent no.1(Managing Director, Beckon Business services Pvt Ltd. Miga-1, Sector-3, Parwanoo.)
Shri Sanjav verma, for respondent no.2.(Managing Director, M/s Progression Industry, Pvt Ltd.)

In view of the statement , of the petitioner, recorded separately, the claim of the petitioner regarding which a reference has been made to this Court, by the Labour Commissioner of HP, stands amicably settled as full & final.

Consequently, in view of his statement, recorded today, his claim as referred to this Court by way of reference, in question , stand amicably settled .Resultantly, the reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File , after completion, be consigned to records.

Announced:-
2.6.2010

*Presiding Judge,
Labour Court, Shimla.*

Ref.50/2009

SH JAI CHAND V/S M.D.M/S CYPER PHARMA PVT LTD.

2.6.2010:-

Present:- Petitioner in person.
None for respondent.

It has been stated by the petitioner that he does not want to file statement of claim, as already, he has effected a compromise with the respondent company and for the reason, he does not want to file statement of

claim in pursuance to the reference, made to this Court,. Consequently, the claim of the petitioner, in respect of which, the reference has been made to this Court by the Labour Commissioner, stands disposed of as compromised .Resultantly, the reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File , after completion , be consigned to records..

Announced:
2.6.2010

*Presiding Judge,
Labour Court, Shimla.*

Ref.86/2006
7.6.2010

WORKERS UNION V/S M/S PROVIEW ELECTRONICS PVT LTD.

7.6.2010:-

Present:- Shri Niranjn Verma, Advocate for the petitioner.
Sh Neeraj Maniktala, Advocate, for the respondent.
No Pw is present. For today , this case is fixed for the evidence of the petitioners as last opportunity.

It has been stated by Shri Noranjan Verma, Advocate for the petitioners that amicable settlement has already been effected between the parties. He further stated that now the petitioners do not want to pursus with their claim, as referred, by the Labour Commissioner, by way of reference, made to this Court.

To this effect, statement of the Learned counsel ,recorded separately.

On having considered the statement of Ld. Counsel, made on behalf of the petitioners, I am satisfied that a lawful settlement has been effected between the parties, out of court. Accordingly, the claim of the petitioners stands dismissed for having been compromised. Resultantly, the reference , made to this Court, stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File , after completion , be consigned to records.

Announced:
7.6.2010

*Presiding Judge,
Labour Court, Shimla.*

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA.

Ref no. 118 of 2004.
Instituted on 22.7.2004.
Decided on. 5.6.2010.

Krishan Chand S/o Shri Bratu Ram R/o Village Jachh, P.O Jassur, Tehsil Nurpur,
District Kangra, H.P.

..Petitioner.

VS.

The Managing Director, HP Agro Industries Corporation Ltd. Shaligram bhawan, Shimla-
171001.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri P.P Chauhan, Advocate.

For respondent: Shri Atul Jhingan, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Krishan Chand S/o Shri Bratu Ram ex daily wages welder by the Manging Director, HP Agro Industries Corporation Ltd. Shaligram Bhawan, Khalini, Shimla 171001 w.e.f. 22.9.1992 without complying the provisions of the Industrial disputes Act, 1947 is proper and justified? If not, to what relief of service benefits Shri Krishan Chand is entitled to?"

2. Briefly, the case of the petitioner is that, he had been engaged as daily wage welder by the respondent Corporation (hereinafter referred Corporation) since, 1983 and discharged his duties to the entire satisfaction of his superiors. A case was filed by him in the Hon^{ble} High Court where an undertaking was given on behalf of the Corporation that the process for his regularization would be initiated. It is further asserted that he had proceeded on two days casual leave w.e.f. 20.4.1990 to 21.4.1990, which had been duly sanctioned by the Production Manager, Himagrigo Implements & Tools Factory, Jachh (hereinafter referred Production Manager). Thereafter, an application, for extension of the leave was sent/submitted, alongwith the certificate of illness of his mother. Since, there was none to look after his ailing mother, he again applied for extension of leave. Since, no information had been conveyed to him, he genuinely believed that his leave had been duly sanctioned. It is further asserted that since his mother was suffering from mental ailment, she could not be left un-attended. Despite, all an enquiry had been suddenly, initiated, against him, in the most impartial manner and ultimately, his services were ordered to be terminated vide office order no. AIC-3-83/84-5462 dated 22.9.1992 (hereinafter referred order), illegally and arbitrarily. Even, he had not been afforded any opportunity of being heard before passing the order. The copy of enquiry report was not supplied to him, before, terminating his services. Since, the order had been passed in an arbitrary and malafide manner and also in violation of the Rules and Standing Orders, the same deserves to be quashed and set aside and his services are required to be reengaged, with all the consequential benefits.

3. The petition has been contested on having raised preliminary objections including maintainability and estoppel. On merits, it has been admitted that the petitioner had been engaged as daily wage in the year, 1983 but it has been denied that he has been discharging his duties satisfactorily. In fact, he was in the habit of remaining absent, from duty, on false and frivolous grounds. Till the termination of the services of the petitioner, no order has been passed by the Hon^{ble} High Court in respect of the regularization of his services. Moreover, he has also not completed the requisite years of service. The two days leave, on which the petitioner had proceeded, had been duly sanctioned by the Production Manager but his application dated 24.4.1990, for the extension of the leave, had been rejected vide letter no. 229 dated 28.4.1990, by the Production Manager and that the petitioner was asked to resume his duties, immediately. Despite that, he (petitioner) wrote another letter dated 3.5.1990, whereby he sought further extension of leave on the ground of his mother's illness. In response to his such letter, the Production Manager, asked him to join the duties, within two days, alongwith medical certificate, in respect of his ailing mother and also to explain the reasons of his wilful absence, vide letter dated 24.5.1990. In that letter, the Production Manager had clearly alleged that the petitioner had been engaged in private business, while serving the Corporation and for this reason, intentionally avoiding his official duty by making false excuses. Instead of joining his duties, he (petitioner) wrote another letter dated 28.5.1990 seeking further extension of leave. The Production Manager, vide letter no. 425 dated 21.6.1990, again asked the petitioner to resume his duties and also to submit the medical certificate but he (petitioner) did not bother. In these circumstances, the Production Manager, referred the case to the Head Office for further action and in consequence thereof, a notice, dated 12.7.1990, had been issued to the petitioner, asking him to resume his duties and to submit the requisite medical certificate. Upon this, he submitted a certificate, procured from a Vaid alongwith his letter dated 20.7.1990. The medical certificate appeared to be fictitious because it did not specify any period of illness, nor the nature of illness and further the necessity of an attendant. The aforesaid letter was forwarded by the Production Manager to the head Office alongwith his remarks that the petitioner had not joined the

duties till 4.9.990 and that he was mostly seen at M/s Sharma Engineering Works, Bodh, P.O Bassa Waziran, Tehsil Nurpur, District Kangra (hereinafter referred M/s Sharma Engineering Works), which is at a distance of 1 ½ K.M from the factory premises, where the petitioner was employed. It is further asserted that although, the petitioner had been issued letter on his address, Sharma Engineering Works, situated at a distance of 1 ½ K.M, from his place of employment but he never approached the Production Manager, personally and chose to correspond through post. When the petitioner did not resume his duties till 26.11.1990, despite repeated reminders, charge sheet, vide memorandum dated 26.11.1990, was served upon him to which he filed reply dated 5.11.1990. This clearly goes to show that he had been given full opportunity, of being heard. Thereafter, the disciplinary authority, ordered for holding an enquiry against him. During the enquiry, he had been afforded ample opportunity to defend his case. Even, during the enquiry proceedings he had sought one month's time to produce medical certificate, regarding the illness of his mother, from some Hospital of Amritsar, but he failed to do so. On the completion of the enquiry, vide enquiry report dated 1.8.1991, the charges of wilful absence against him, were found to have been proved and also that he had been engaged in private works, while in service with the Corporation. On the basis of enquiry report, the disciplinary authority ordered the termination of his services vide order dated 22.9.1992. It has been specifically denied that the termination orders had been issued for debarring the petitioner from seeking regularization of his services. It has also been specifically denied that the petitioner is unemployed. Other allegations denied.

4. No rejoinder filed. Pleadings of the parties, gave rise to the following issues, which were struck on 25.10.2005.

1. Whether the services of Krishan Chand have been terminated by the respondent w.e.f. 22.9.1992? If so, its effect?

OPP.....

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to?

OPP.....

3. Whether the present petition is not maintainable?

OPR.....

4. Whether the petitioner is estopped from filing the petition due to his own acts and conduct?

OPR.....

5. Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1 Yes.

Issue no.2 Entitled to reinstatement in service with seniority and continuity but without back wages.

Issue no.3 No.

Issue no.4 No.

Relief. Reference answered in favour of the petitioner and against the respondent, per operative part of award.

REASONS FOR FINDINGS.

Issue No.1

7. In his evidence, the petitioner (PW-1), has filed his affidavit Ex. PW-1/A. He has supported all the material facts, on oath, including that he had not been afforded an opportunity, of being heard, and also that the copy of the enquiry report had not been supplied to him before passing the order of termination. In the cross-examination, he has denied that on 26.11.1990, he was charge sheeted, which was duly served

upon him. He admitted that during the enquiry, he was personally present, and to have sought one month's time to produce medical certificate, before the Enquiry Officer and that the same, he did not produce. He expressed his lack of knowledge as to whether he had filed reply to charge sheet dated 26.11.1990 but admitted that enquiry had been conducted against him. He has specifically denied that the enquiry report had been supplied to him but admitted that during the enquiry, his statement had been recorded. During enquiry, he had admitted that, some times, he used to go to Sharma Engineering Works, in order to help his brother which belongs to him (brother).

8. Shri G.D Kondal (RW-1), has stated to be conversant with the facts of the case and also that he has brought the relevant record. According to him, the services of the petitioner had been terminated on 22.9.1992 on the ground of wilful absence. He further deposed that Shri R.K Sharma, had been appointed as an Enquiry Officer and that he conducted the enquiry in which the petitioner had appeared and that he had not opted to take the services of defence assistant. The petitioner had been charge sheeted for wilful absence and in the enquiry, he had been found guilty for such. Before the Enquiry Officer, he had also admitted that his brother runs a welding shop in Nurpur, where he (petitioner) used to work casually. The petitioner had been afforded full opportunities to defend his case and the department also awaited for him for about 2 ½ years so that he may resume his duties but of no avail. No junior to the petitioner has been engaged after his termination. In the cross examination, he admitted that the petitioner had deposed before the Enquiry Officer that the medical certificate, of his mother, had been submitted by his father, in his office, who was a government servant. He expressed his ignorance as to whether the petitioner had been given opportunity to cross examine the departmental witnesses and that whether the enquiry report, alongwith show cause, had been given to him after the conclusion of the enquiry.

9. At the very outset, I would like to point out that Shri G.D Kondal (RW-1), has not conducted the enquiry against the petitioner. From his statement, it is highlighted that Shri R.K Sharma, Divisional Manager, had been appointed as an Enquiry Officer, in order to prove the charges against the petitioner, regarding his alleged wilful absence. It is not understandable as to why Shri R. K Sharma, Enquiry Officer, who conducted the enquiry against the petitioner, has not been examined by the respondent. It has been specifically alleged by the petitioner that during the enquiry, he had not been given proper hearing and this fact he has supported in his affidavit Ex PW-1/A. In my considered view, it was Shri R.K Sharma, Enquiry Officer, who could have stated before this Court, on oath, as to whether proper hearing had been afforded to the petitioner, to defend himself, in the enquiry or not. I may observe that even the enquiry report has not been tendered, in evidence, on behalf of the respondent. In fact, the respondent has not been tendered, any documents, in respect of the alleged wilful absence, of the petitioner and the correspondence, regarding the same. Undoubtedly, the documents, pertaining to the same, are on the file but those have neither been tendered nor Shri G.D Kondal (RW-1) placed reliance on those documents, during the recording of his statement, by getting them either exhibited or marked. It has been specifically alleged by the petitioner that he had not been supplied with the copy of the enquiry report before this order, qua his termination, was passed. Even, Shri G.D Kondal, (RW-1), has not stated that the copy of the enquiry report, alongwith show cause notice, had been supplied to the petitioner. There is also no document on record which could go to show that the petitioner had been apprised of his right, to be defended by an Assistant (Defence Assistant) and that he had refused to avail the services of such Assistant. There is further no material, on the file, which could go to show that the petitioner had been afforded opportunity to cross examine the witnesses of the Corporation and that his explanation had been obtained in respect of the incriminating circumstances, which had come, against him, in the enquiry. This, clearly shows that the enquiry had not been conducted, against him, in consonance with the principle of natural justice. It has been held by the *Hon'ble Supreme Court in 2010 LLR 494, LIC & another Vs. Rampal Singh* that:-

“When neither copy of enquiry report had been given nor reasons for recording guilt disclosed in the show cause notice, the courts below had rightly held that the respondent was denied opportunity of hearing and the whole proceedings was thus vitiated”.

10. In the instant case, from the affidavit Ex. RW-1/A, the petitioner (PW-1), has discharged the onus which was upon him to prove that his services had been wrongly terminated by the respondent w.e.f. 22.9.1992 as he was not afforded opportunity of being heard as per the principle of natural justice. Consequently, on the basis of evidence led by the petitioner and also failure of the respondent to have brought the relevant record qua enquiry proceedings, including the enquiry report, I, without hesitation hold

that the services of the petitioner had been wrongly terminated by the respondent vide order dated 22.9.1992. Accordingly, my answer to this issue is in "Yes".

Issue No.2

11. Admittedly, the petitioner had proceeded on two days leave from 20.4.1990 to 21.4.1990 which had been sanctioned in his favour. It is also not disputed fact that thereafter, he did not resume the duties for the reason that he kept on writing the Production Manager/Department for extending the leave on the pretext that his mother was ill and that there was none to look after her. From the record, it is further borne out that till 22.9.1992 when his services were terminated, he did not join his duties except to have appeared before the Enquiry Officer, as is evident from his cross examination, when appeared in the witness box, as PW-1. When regard is given to the affidavit of the petitioner, which is Ex. PW-1/A, nothing such has come which may go to show that he is not gainfully employed. On the contrary, his cross examination, goes to show that he used to work with his brother in Sharma Engineering Works in order to help him. His such version indicates that he had not been un-employed either during the period, when he remained absent from duty, in order to allegedly look after his ailing mother, and also after his termination. In these circumstances, it is not justified that he should be granted back wages. However, since his termination vide order dated 22.9.1992 has been held to be illegal and unlawful, he deserves to be reinstated, with seniority and continuity, in service but without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue No. 3

12. No evidence has been led by the respondent in order to show as to why this petition is not maintainable. The claim has been filed by the petitioner in pursuance to the reference which has been made to this Court by the Labour Commissioner. In the absence of anything to the contrary, I hold this petition to be maintainable and my to this issue is in "No".

Issue No. 4

13. Although, an objection has been taken by the respondent that the petitioner is estopped from filing the petition due to his act and conduct but in support thereof, no specific evidence has been led. Even, Shri G.D Kondal, (RW-1), has not stated that the petitioner is estopped from filing the claim, on account of his own act & conduct. Thus, by holding that the petitioner is not estopped from filing this petition, my answer to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service, at same place and on the same post on which he had been working prior to his termination, with seniority and continuity but without back wages, from the date of his termination i.e 22.9.1992. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 5th June, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref no. 6 of 2009.

Instituted on 17.2.2009.

Decided on. 3.6.2010.

Bhagwan Dass S/o Shri Devi Saran R/o VillageGawahi, P.O Kiarkoti, Tehsil & District Shimla, HP. through next friend Shri Hari Ram S/Shri Devi Saran(brother).

..Petitioner.

VS.

The Executive Engineer, (B&R), Municipal Corporation, Shimla, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Harinder Verma, Advocate.

For respondent: Shri Sandeep Dutta, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Bhagwan Dass S/o Shri Devi Saran, Village Gawahi, P.O Kiarkoti, Tehsil & District Shimla, HP by the Executive Engineer, (B&R) Municipal Corporation, Shimla w.e.f. 21.11.2005 without complying with the provisions of the Industrial Disputes Act, 1947 is leagal and justified? If not, what relief of service benefits i.e reinstatement, compensation and seniority, the above workmen is entitled to from the employer?"

2. Petitioner, Shri Bhagwan Dass, a deaf and dumb, has filed this claim petition through his next friend Shri Hari Ram.

3. Be it be noted that for getting appointed the next friend/Gardiner, an application under order 32 rule 1 CPC was also filed.

4. Facts, in brief, are that the petitioner had been engaged as beldar on daily wages in the office of respondent on 21.4.1997 and worked as such, continuously till 21.5.2005, when his services were terminated, without giving any notice as required under section 25F of the Industrial Disputes Act, 1947 (hereinafter referred Act). In each calendar year, he had completed 240 days and performed his duties with full sincerity and devotion to the satisfaction of his superiors. It is further averred that the respondent has engaged fresh persons and that the juniors to the petitioner are still working. Since, his services had been terminated in violation of the provisions of the Act, he deserves to be reinstated in service with all consequential benefits.

5. Petition has been contested on having raised various preliminary objections including maintainability and that the same is bad for want of issuance of mandatory notice under section 392 of the HP Municipal Corporation, Act. On merits, it has been denied that the petitioner had worked continuously till 21.11.2005 as alleged and that his services had been terminated. In fact, he had left the job on 20.11.2005, on his own and thereafter, remained absent for about fourteen months. Other allegations denied.

6. Pleadings of the parties gave rise to the following issues, which were struck on 16.11.2009.

1. Whether the termination of services of petitioner by the respondent w.e.f. 21.11.2005 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged?

OPP.....

2. If issue no.1 is proved, to what relief, of service benefits, the petitioner is entitled to?
OPP.....
3. Whether the claim is neither competent nor maintainable in the present form?
OPR.....
4. Whether the claim is bad for notice under section 392 of the HP MC Act as alleged?
OPR.....
5. Relief.
7. I have heard the learned counsels for the parties and have also gone through the record of the case carefully.
8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.
- | | |
|------------|---|
| Issue no.1 | Yes. |
| Issue no.2 | Entitled to reinstatement, with seniority and continuity, in service but without back wages. |
| Issue no.3 | No. |
| Issue no.4 | No. |
| Relief. | Reference answered in favour of the petitioner and against the respondent, per operative part of award. |

REASONS FOR FINDINGS

Issue No.1

9. The contention of the petitioner, through his next friend, is to this effect that his services had been terminated without notice and compensation, despite the fact that, he had completed 240 days in the twelve calendar months preceding his termination. Further, it has also been asserted that juniors to him are still in service.

10. On the contrary, the defence plea is that the petitioner had left the job, on his own, and that his services had never been terminated.

11. Shri Hari Ram (PW-1), is the next friend of the petitioner. He has supported this fact that for the petitioner being deaf and dumb, he is his guardian, being the real brother. With the facts of the case, he is well conversant. His brother (petitioner), had been engaged as beldar on daily wages in April, 1997 and he continued as such till 21.5.2005 when his services were terminated, without any notice and paying compensation. He had accompanied the petitioner to the office of M.C Shimla for his reinstatement but of no avail. In the year, preceding his termination, the petitioner had completed 240 days. In the cross examination, he expressed his ignorance that the petitioner had abandoned the job, on his own.

12. Er. Rakesh Verma (PW-2), has proved the muster roll Ex. PA and seniority list Ex. PB, from the original record, brought by him. In the cross examination, he has admitted that the petitioner had abandoned the job on his own.

13. Shri Rakesh Verma (J.E, Municipal Corporation), has also been examined by the respondent as its witness. He supports this fact that the petitioner had been engaged as daily wage beldar on 21.4.1997 and that he worked till 21.11.2005 when he left the job, on his own, without any intimation. The mandays chart of the petitioner is Ex. RA and that in the seniority list, the name of the petitioner has been shown at serial no.175. Vide Ex. RB, he (petitioner), had approached for his reengagement but due to non availability of work, he could not be reengaged. Before, 17.1.2007, the petitioner had not approached the respondent. In the cross examination, he has stated that Ex. PR-1 is the muster roll, pertaining to the petitioner whereby he had completed 240 days, preceding twelve calendar months and that as per Ex. PB, the petitioner had completed 259 days in the year, 2005. Neither any notice had been issued to the petitioner nor any compensation paid to him.

14. From the Ex. PR-1 (muster roll) and Ex. PB, it stands duly proved that in the twelve preceding months, from the date of his alleged termination, the petitioner had completed more than 240 days. Although, the defence version is to this effect that he (petitioner) had abandoned the job on his own but there is no convincing evidence, on record, to prove this fact. From the documentary as well as oral evidence, it stands duly proved that the petitioner had neither been issued any notice nor paid compensation, before his services were terminated and that in the twelve preceding months, he had completed 240 days. It was obligatory upon the respondent to have complied with the requirements of section 25F of the Act. For the failure of the respondent, to have complied with the provisions of section 25F of the Act, the termination of services of the petitioner w.e.f. 21.11.2005 is held to be illegal and unjustified. Consequently, my answer to this issue is in "Yes".

Issue No. 2

15. By giving due regard to the above mentioned facts and circumstances, particularly, that the petitioner has failed to prove that he has not been gainfully employed, after his termination, I without hesitation hold that he is not entitled for back wages. However, since his services had been terminated against the provisions of sections 25F of the Act, he is entitled to be reinstated, with seniority and continuity in service but without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue No. 3

16. Consequent upon the reference, which has been made to this Court, the petitioner, through his next friend (Hari Singh, brother), has filed statement of claim. It is not understandable as to why the claim of the petitioner is neither competent nor maintainable. Moreover, at the time of arguments, it could not been explained on behalf of the respondent, as to why, the claim of the petitioner is not maintainable. Thus, my answer to this issue is in "No".

Issue No. 4

17. I may mention that the petitioner, through his next friend, has not filed his statement of claim before this Court directly. The same was filed consequent upon the reference having been made to this Court by Labour Commissioner. When such is the position, it cannot be said that the claim of the petitioner is bad for want of notice under section 392 of the HP MC, Act. It is also to be observed that this Court is required to answer the reference which has been made to it by the Labour Commissioner. Accordingly, my answer to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e w.e.f. 21.11.2005. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 3rd June, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT NAHAN

Ref no. 14 of 2009.

Instituted on 4.4.2009.

Decided on. 25.6.2010.

Suresh Chand S/o Himat Singh, R/o Village Talpura, P.O Palio, Tehsil Nahan, District Sirmour, HP.

..Petitioner.

VS.

1. The Deputy Commissioner, District Sirmour at Nahan-cum-Chairman, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP.
2. The SDM, Nahan, District Sirmour-cum-Administrator, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.K Khidta, Advocate.

For respondent: Shri A.K Rewal, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

“Whether termination of the services of Shri Suresh Chand S/o Shri Himat Singh, by the Chairman-cum-Deputy Commissioner, Sirmour at Nahan Maha Mai Balasundri, Trilokpur Temple, Trust, Tehsil Nahan, District Sirmour and ii) Administrator-cum-SDM Nahan, Maha Mai Baladundri, Trilokpur Temple Trust, Tehsil Nahan District Sirmour, HP without complying the mandatory provisions of the Industrial Disputes Act, 1947 I legal and justified? If not, what relief of service benefits, including seniority, back wages and compensation, the above aggrieved workman is entitled to”.

2. In nutshell, the case of the petitioner is that he was engaged by the Temple Trust Committee, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP, w.e.f. March, 1995. The respondent used to engage the petitioner for five to six months in a year and that he worked as such till 2003. In the month of 2004, he (petitioner) was engaged as beldar, on daily wages and worked as such till December, 2004. In the month of Jan. 2005, he had been engaged as Mason, on daily wage basis and worked as such till 1.7.2007. On 2.7.2007, his services were orally terminated, by the Temple Administrator, without serving any notice and paying retrenchment compensation, in violation of the Provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act). Initially there was a Temple Committee which, in the year, 1999, was taken over by the Trust, which is headed by its Chairman (Deputy Commissioner). Thus, from the year 2004, the Temple Administration, has been under the Trust and respondent no.1, its Chairman, and respondent no.2, the Administrator. It is further averred that the petitioner had completed 240 days in each calendar year. Moreover, juniors to him namely S/Shri Ramesh, Prem Singh, Chaman & others are still working. In this way, he deserves to be reinstated with all the consequential benefits as his services have been terminated in violation of the mandatory provisions of the Act.

3. The claim of the petitioner has been contested on having raised preliminary objections including jurisdiction. On merits, it has been asserted that the petitioner had been engaged as casual worker by the respondents during the construction of their building. Since, new industries were being set up, at Kala Amb, he (petitioner) left the work, on his own, in order to work in the industries, on more wages. It has been denied that the services of the petitioner had been terminated by the respondents. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 28.8.2009.

1. Whether the termination of the services of the petitioner by Chairman-cum-Deputy Commissioner, Maha Mai Balasundri, Temple Trust, Tehsil Nahan & Administrator-cum-SDM, Nahan Maha Mai Balasundri, Temple Trust, Nahan, is illegal and unjustified as alleged?

OPP.....

2. If issue no.1 is proved, to what relief of service benefits including seniority and back wages, the petitioner is entitled to?

OPP.....

3. Whether this court has no jurisdiction to try this reference?

OPR.....

4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1

8. Ld. Counsel for the petitioner has submitted that in order to defeat the provisions of the Act, so that the petitioner may not complete 240 days, fictional breaks were being given. He further urged that since the petitioner had remained in work for such a long period, it clearly goes to show that the work was of continuous/permanent nature. He also submitted that since the services of the petitioner had been disengaged without notice and retrenchment compensation, the same is illegal and unjustified for being in violation of the provisions of the Act. Further, as it stands proved on record that the juniors to the petitioner have been engaged/retained in work, this also goes to show that there have been violation of the provisions of section 25G & H of the Act. Another contention, which has been advanced by the Ld. counsel is to this effect that since the respondent has not stepped into the witness box, there is no such material, whatsoever, on record, which could go to prove its defence. By merely examining one of the workers namely Shri Nathu Ram (RW-1), the defence version that the petitioner had left the job, on his own, in order to work in some private firm, is not proved.

9. On the other hand, Ld. Counsel appearing on behalf of the respondent has urged with vehemence that the services of the petitioner had been engaged as a casual worker and that he left the work, on his own. Moreover, now the work stands completed. Thus, when the petitioner, on his own, had left the job and also that the work is complete, it cannot be said that there has been any violation of the provisions of the Act. In support of his contentions, the Ld. Counsel has relied upon **2008 ACJ 1700, Om Prakash Batish**

Vs. Ranjit and others. Latest HLJ 2006 HP 116, State of HP & others Vs. Presiding Judge & another and Latest HLJ 2006 834, State of HP & Ors. Vs. Bir Singh and another.

10. Undoubtedly, Ld. Counsel for the respondent, by putting reliance on 2008 ACJ 1700 (supra) has urged that a person, who is employed for a limited period for carrying out repair work in a residential house, is not a workman but this ruling is of no help to the respondent because in the instant case it has not been proved that the services of the petitioner had been engaged for doing a work, which was for short/limited period. On the contrary, it is quite evident that the work, being performed by him (petitioner), was of continuous/permanent nature.

11. The stand of the respondent is that the petitioner was a casual labourer and that he had abandoned the work, on his own, in order to work on higher wages in the factories, being set up at Kala Amb. The respondents in support of their defence have examined Shri Nathu Ram (RW-1), who tendered his affidavit Ex. R-1 in his chief examination. In his affidavit, he has stated that the petitioner had left the Temple Construction work, on his own, as he was employed by a private unit, M/s Pritam Electricals Pvt. Ltd. at Kala Amb. When the Temple started new work, he (petitioner) had been sent a message through him (RW-1), to join the job but of no avail. In the cross examination, he stated that for the last seven years, he has been working as Mason with the Temple Trust and that the petitioner had also been working alongwith him. He admitted that he (petitioner) had been engaged in the year, 1995. No written order/notice had been sent through him, to the petitioner, to join his duties. He admitted that his version is to this effect, that all the workers (about 100), had been terminated by the trust.

12. From the evidence, which has been led by the respondents, it has not been proved that the petitioner had abandoned the job, on his own. I may mention that the respondents have neither taken any steps to produce any documentary evidence that the petitioner has been employed in private unit at Kala Amb nor examined any person from that unit in support thereof. In these circumstances, the case law relied upon by the respondent (supra), has no applicability in the present case. It is also to be noted that the Ld. Counsel for the petitioner has rightly argued that since, the respondents have neither examined the Chairman or the Administrator of the respondents Trust, its defence that the petitioner had abandoned the job, on his own, is also not proved.

13. In his affidavit, Ex. P/A, the petitioner (PW-1), has supported all the material facts, on oath, including that he had worked for 240 days in each calendar year before his services had been terminated. He has denied that his services had been engaged, subject to the availability of work and that at present, he has been working with private Industries at Kala Amb.

14. According to Shri Harish Sharma (PW-2), Assistant Manager, Accounts, in the Temple Trust, the petitioner had been engaged as Mason in April, 2004 and worked till 1.7.2007, when his services had been disengaged, after the completion of work, without notice and compensation. S/Shri Jagat Singh, Chetan, Sita Ram and others are junior to the petitioner and that they are still working with the respondent. In the cross examination, he admitted that the petitioner had not been given regular appointment and that he had left the job, on his own. He further admitted that the petitioner had not completed 240 days in a calendar year.

15. The petitioner has led positive oral evidence to prove his assertion that he had completed 240 days in the twelve calendar months preceding his termination. Even, from the statement of Shri Harish Sharma (PW-2), it is revealed that he (petitioner) had worked from Feb., 2004 to 30.6.2007. In the affidavit of Shri Nathu Ram (RW-1), it has not been stated that the petitioner had not completed 240 days in the twelve preceding months from the date of his termination. Thus, I hold that the petitioner has succeeded in proving that he had completed 240 days in the twelve calendar months preceding his termination.

16. From the statement of Shri Harish Sharma (PW-2), it is further borne out that juniors to the petitioner are still working with the respondent-Trust. Although, the contention of the respondents is to this effect that the petitioner had left the job, on his own, in order to work in private factories, on higher wages but there is no reliable and cogent evidence, on record, to prove this assertion, particularly, when the evidence, led by the petitioner, is convincing and reliable. It has been held by our own Hon'ble High Court in ***latest HLJ 2007 (HP) 903 State of HP & Others Vs. Bhatag Ram & Another.*** that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

17. From the evidence on record, it also stands proved that the juniors to the petitioner are still in job. When such is the position, the termination of the services of the petitioner is in violation of the provisions of section 25G & H of the Act. It has been held by our own Hon^{ble} High Court in case titled as ***State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903.*** that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

18. Since, on the record, it stands established that juniors to the petitioner, as mentioned above, are still in job, his termination, being in violation of the provisions of section 25 G & H of the Act, is illegal and unjustified and also for want of compliance of section 25F. Consequently, my answer to this issue is in “Yes” accordingly.

Issue No. 2

19. Ld. Counsel for the petitioner has contended with vehemence that the petitioner is entitled for full back wages because his services had been terminated illegally and in unjustified manner. On the other hand, it has been argued on behalf of the respondents that since the petitioner has failed to prove that he is not gainfully employed, he cannot be granted back wages. In support of his such contention, Ld. counsel placed reliance ***Latest HLJ 2007 (HP) 306, Pawan Kumar Vs. HP State Industrial Dev. Corporation & Aar*** in which it has been held that ***“a workman is not entitle for back wages unless establish that he is not gainfully employed for which purpose, the burden is on him”***. Ld. Counsel has also relied upon ***2010 (1) SLJ (SC), 70, M/s Reetu Marbles Vs. Prabhakant Shukla*** in which it has been held that ***“Payment of full back wages upon an order of termination, being declared illegal, cannot be granted mechanically”***. It has been further held that ***“It does not automatically follow that reinstatement must be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”***.

20. In the instant case, the petitioner has not led any convincing and reliable evidence that after his disengagement/retrenchment, he has not been gainfully employed. Moreover, keeping in view the period for which he had remained engaged and also the legal position, as stated above, I am of the considered view that he (petitioner) is not entitled to be granted back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated, with seniority and continuity in service but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue No. 3

21. An objection has been taken by the respondent that this court has no jurisdiction to try this reference as the respondents Trust is not an Industry but this objection does not hold good in view of the law laid down by the ***Constitutional Bench of Hon’ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa*** in which it has been held that educational institutions and research centres are Industries. It has further been held that a University is an Industry particularly with respect to small workers like Mali, Chowkidars, Carpenters etc. and as such on the strength of this judgment, it can be safely concluded that the respondents are governed by the Act, especially in case of the daily wage workers. Consequently, my answer to this issue is in “No”.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 2.7.2007 Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 25th June, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.
Camp at Nahan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT NAHAN

Ref no. 15 of 2009.
Instituted on 4.4.2009.
Decided on. 25.6.2010.

Dhuni Chand S/o Shri Parkash Chand, R/o Village Katola, P.O Sainwala, Tehsil Nahan,
District Sirmour, HP.

..Petitioner.

VS.

1. The Deputy Commissioner, District Sirmour at Nahan-cum-Chairman, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP.
2. The SDM, Nahan, District Sirmour-cum-Administrator, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.K Khidta, Advocate.

For respondent: Shri A.K Rewal, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

“Whether termination of the services of Shri Dhuni chand S/o Shri Parkash Chand, by the Chairman-cum-Deputy Commissioner, Sirmour at Nahan Maha Mai Balasundri, Trilokpur Temple, Trust, Tehsil Nahan, District Sirmour and ii) Administrator-cum-SDM Nahan, Maha Mai Baladundri, Trilokpur Temple Trust, Tehsil Nahan District Sirmour, HP without complying the mandatory provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits, including seniority, back wages and compensation, the above aggrieved workman is entitled to”.

2. In nutshell, the case of the petitioner is that he was engaged as Mason, by the Temple Trust Committee, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP, on daily wages in the month of Feb., 2004 and worked as such till 30.6.2007. On 1.7.2007, his services were orally terminated, by the Temple Administrator, without serving any notice and paying retrenchment compensation, in violation of the Provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act). Initially there was a Temple Committee which, in the year, 1999, was taken over by the Trust, which is headed by its Chairman (Deputy Commissioner). Thus, from the year 2004, the Temple Administration, has been under the Trust and respondent no.1, its Chairman, and respondent no.2, the Administrator. It is further averred that the petitioner had completed 240 days in each calendar year. Moreover, juniors to him namely S/Shri Ramesh, Chaman & Prem Singh are still working. In this way, he deserves to be reinstated with all

the consequential benefits as his services have been terminated in violation of the mandatory provisions of the Act.

3. The claim of the petitioner has been contested on having raised preliminary objections including jurisdiction. On merits, it has been asserted that the petitioner had been engaged as casual worker by the respondents during the construction of their building. Since, new industries were being set up, at Kala Amb, he (petitioner) left the work, on his own, in order to work in the industries, on more wages. It has been denied that the services of the petitioner had been terminated by the respondents. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 28.8.2009.

1. Whether the termination of the services of the petitioner by Chairman-cum-Deputy Commissioner, Maha Mai Balasundri, Temple Trust, Tehsil Nahan & Administrator-cum-SDM, Nahan Maha Mai Balasundri, Temple Trust, Nahan, is illegal and unjustified as alleged?

OPP.....

2. If issue no.1 is proved, to what relief of service benefits including seniority and back wages, the petitioner is entitled to?

OPP.....

3. Whether this court has no jurisdiction to try this reference?

OPR.....

4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent, per operative part of award.

REASONS FOR FINDINGS.

Issue No. 1

8. Ld. Counsel for the petitioner has submitted that in order to defeat the provisions of the Act, so that the petitioner may not complete 240 days, fictional breaks were being given. He further urged that since the petitioner had remained in work for such a long period, it clearly goes to show that the work was of continuous/permanent nature. He also submitted that since the services of the petitioner had been disengaged without notice and retrenchment compensation, the same is illegal and unjustified for being in violation of the provisions of the Act. Further, as it stands proved on record that the juniors to the petitioner have been engaged/retained in work, this also goes to show that there have been violation of the provisions of section 25G & H of the Act. Another contention, which has been advanced by the Ld. counsel is to this effect that since the respondent has not stepped into the witness box, there is no such material, whatsoever, on record, which could go to prove its defence. By merely examining one of the workers namely Shri Ramesh Chand (RW-1), the defence version that the petitioner had left the job, on his own, in order to work in some private firm, is not proved.

9. On the other hand, Ld. Counsel appearing on behalf of the respondent has urged with vehemence that the services of the petitioner had been engaged as a casual worker and that he left the work, on his own. Moreover, now the work stands completed. Thus, when the petitioner, on his own, had left the job and also that the work is complete, it cannot be said that there has been any violation of the provisions of the Act. In support of his contentions, the Ld. Counsel has relied upon **2008 ACJ 1700, Om Prakash Batish Vs. Ranjit and others, Latest HLJ 2006 HP 116, State of HP & others Vs. Presiding Judge & another and Latest HLJ 2006 834, State of HP & Ors. Vs. Bir Singh and another.**

10. Undoubtedly, Ld. Counsel for the respondent, by putting reliance on 2008 ACJ 1700 (supra) has urged that a person, who is employed for a limited period for carrying out repair work in a residential house, is not a workman but this ruling is of no help to the respondent because in the instant case it has not been proved that the services of the petitioner had been engaged for doing a work, which was for short/limited period. On the contrary, it is quite evident that the work, being performed by him (petitioner), was of continuous/permanent nature.

11. The stand of the respondent is that the petitioner was a casual labourer and that he had abandoned the work, on his own, in order to work on higher wages in the factories, being set up at Kala Amb. The respondents in support of their defence have examined Shri Ramesh Chand (RW-1), who tendered his affidavit Ex. R-1 in his chief examination. In his affidavit, he has stated that the petitioner had left the Temple Construction work, on his own as he was employed by a private unit, M/s Pritam Electricals Pvt. Ltd. at Kala Amb. When the Temple started new work, he (petitioner) had been sent a message through him (RW-1), to join the job but of no avail. In the cross examination, he stated that for the last 10-11 years, he has been working as Mason with the Temple Trust and that the petitioner had also been working alongwith him. He admitted that he (petitioner) had been engaged in the year, 2004. No written order/notice had been sent through him, to the petitioner, to join his duties. He admitted that his version is to this effect, that all the workers (about 100), had been terminated by the trust.

12. From the evidence, which has been led by the respondents, it has not been proved that the petitioner had abandoned the job, on his own. I may mention that the respondents have neither taken any steps to produce any documentary evidence that the petitioner has been employed in private unit at Kala Amb nor examined any person from that unit in support thereof. In these circumstances, the case law relied upon by the respondent (supra), has no applicability in the present case. It is also to be noted that the Ld. Counsel for the petitioner has rightly argued that since, the respondents have neither examined the Chairman or the Administrator of the respondents Trust, its defence that the petitioner had abandoned the job, on his own, is also not proved.

13. In his affidavit, Ex. P/A, the petitioner (PW-1), has supported all the material facts, on oath, including that he had worked for 240 days in each calendar year before his services had been terminated. He has denied that his services had been engaged, subject to the availability of work and that at present, he has been working with private Industries at Kala Amb.

14. According to Shri Harish Sharma (PW-2), Assistant Manager, Accounts, in the Temple Trust, the petitioner had been engaged as beldar in Feb., 2004 and worked till 30.6.2007, when his services had been disengaged, after the completion of work, without notice and compensation. S/Shri Jagat Singh, Chetan, Sita Ram and others are junior to the petitioner and that they are still working with the respondent. In the cross examination, he admitted that the petitioner had not been given regular appointment and that he had left the job, on his own. He further admitted that the petitioner had not completed 240 days in a calendar year.

15. The petitioner has led positive oral evidence to prove his assertion that he had completed 240 days in the twelve calendar months preceding his termination. Even, from the statement of Shri Harish Sharma (PW-2), it is revealed that he (petitioner) had worked from July, 2004 to 30.6.2007. In the affidavit of Shri Ramesh Chand (RW-1), it has not been stated that the petitioner had not completed 240 days in the twelve preceding months from the date of his termination. Thus, I hold that the petitioner has succeeded in proving that he had completed 240 days in the twelve calendar months preceding his termination.

16. From the statement of Shri Harish Sharma (PW-2), it is further borne out that juniors to the petitioner are still working with the respondent-Trust. Although, the contention of the respondent is to this effect that the petitioner had left the job, on his own, in order to work in private factories, on higher wages but there is no reliable and cogent evidence, on record, to prove this assertion, particularly, when the evidence, led by the petitioner, is convincing and reliable. It has been held by our own Hon'ble High Court in **latest HLJ 2007 (HP) 903 State of HP & Others Vs. Bhatag Ram & Another**. that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

17. From the evidence on record, it also stands proved that the juniors to the petitioner are still in job. When such is the position, the termination of the services of the petitioner is in violation of the provisions of section 25G & H of the Act. It has been held by our own Hon'ble High Court in case titled as **State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903**. that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

18. Since, on the record, it stands established that juniors to the petitioner, as mentioned above, are still in job, his termination, being in violation of the provisions of section 25 G & H of the Act, is illegal and unjustified and also for want of compliance of section 25F. Consequently, my answer to this issue is in “Yes” accordingly.

Issue No. 2

19. Ld. Counsel for the petitioner has contended with vehemence that the petitioner is entitled for full back wages because his services had been terminated illegally and in unjustified manner. On the other hand, it has been argued on behalf of the respondents that since the petitioner has failed to prove that he is not gainfully employed, he cannot be granted back wages. In support of his such contention, Ld. counsel placed reliance **Latest HLJ 2007 (HP) 306, Pawan Kumar Vs. HP State Industrial Dev. Corporation & Aar** in which it has been held that ***“a workman is not entitle for back wages unless establish that he is not gainfully employed for which purpose, the burden is on him”***. Ld. Counsel has also relied upon **2010 (1) SLJ (SC), 70, M/s Reetu Marbles Vs. Prabhakant Shukla** in which it has been held that ***“Payment of full back wages upon an order of termination, being declared illegal, cannot be granted mechanically”***. It has been further held that ***“It does not automatically follow that reinstatement must be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”***.

20. In the instant case, the petitioner has not led any convincing and reliable evidence that after his disengagement/retrenchment, he has not been gainfully employed. Moreover, keeping in view the period for which he had remained engaged and also the legal position, as stated above, I am of the considered view that he (petitioner) is not entitled to be granted back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated, with seniority and continuity in service but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue No. 3

21. An objection has been taken by the respondent that this court has no jurisdiction to try this reference as the respondents Trust is not an Industry but this objection does not hold good in view of the law laid down by the **Constitutional Bench of Hon'ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa** in which it has been held that educational institutions and research centres are Industries. It has further been held that a University is an Industry particularly with respect to small workers like Mali, Chowkidars, Carpenters etc. and as such on the strength of this judgment, it can be safely concluded that the respondents are governed by the Act, especially in case of the daily wage workers. Consequently, my answer to this issue is in “No”.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 1.7.2007. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 25th June, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.
Camp at Nahan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT NAHAN

Ref no. 16 of 2009.
Instituted on 4.4.2009.
Decided on. 25.6.2010.

Naresh S/o Shri Ram Singh, R/o Village Tal Pura, P.O Palio, Tehsil Nahan, District Sirmour, HP.

..Petitioner.

VS.

1. The Deputy Commissioner, District Sirmour at Nahan-cum-Chairman, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP.
2. The SDM, Nahan, District Sirmour-cum-Administrator, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.K Khidta, Advocate.

For respondent: Shri A.K Rewal, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

“Whether termination of the services of Shri Jai Husain Singh S/o late Shri Ram Swroop, by the Chairman-cum-Deputy Commissioner, Sirmour at Nahan Maha Mai Balasundri, Trilokpur Temple, Trust, Tehsil Nahan, District Sirmour and ii) Administrator-cum-SDM Nahan, Maha Mai Baladundri, Trilokpur Temple Trust, Tehsil Nahan District Sirmour, HP without complying the mandatory provisions of the Industrial Disputes Act, 1947 I legal and justified? If not, what relief of service benefits, including seniority, back wages and compensation, the above aggrieved workman is entitled to”.

2. In nutshell, the case of the petitioner is that he was engaged as Mason, by the Temple Trust Committee, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP, on daily wages in the month of May, 2005 and worked as such till 1.7.2007. On 2.7.2007, his services were orally terminated, by the Temple Administrator, without serving any notice and paying retrenchment

compensation, in violation of the Provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act). Initially there was a Temple Committee which, in the year, 1999, was taken over by the Trust, which is headed by its Chairman (Deputy Commissioner). Thus, from the year 2004, the Temple Administration, has been under the Trust and respondent no.1, its Chairman, and respondent no.2, the Administrator. It is further averred that the petitioner had completed 240 days in each calendar year. Moreover, juniors to him namely Ramesh, Prem Singh & Chaman are still working. In this way, he deserves to be reinstated with all the consequential benefits as his services have been terminated in violation of the mandatory provisions of the Act.

3. The claim of the petitioner has been contested on having raised preliminary objections including jurisdiction. On merits, it has been asserted that the petitioner had been engaged as casual worker by the respondents during the construction of their building. Since, new industries were being set up, at Kala Amb, he (petitioner) left the work, on his own, in order to work in the industries, on more wages. It has been denied that the services of the petitioner had been terminated by the respondents. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 28.8.2009.

1. Whether the termination of the services of the petitioner by Chairman-cum-Deputy Commissioner, Maha Mai Balasundri, Temple Trust, Tehsil Nahan & Administrator-cum-SDM, Nahan Maha Mai Balasundri, Temple Trust, Nahan, is illegal and unjustified as alleged?

OPP.....

2. If issue no.1 is proved, to what relief of service benefits including seniority and back wages, the petitioner is entitled to?

OPP.....

3. Whether this court has no jurisdiction to try this reference?

OPR.....

4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1	Yes.
Issue No.2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue No.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent, per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. Ld. Counsel for the petitioner has submitted that in order to defeat the provisions of the Act, so that the petitioner may not complete 240 days, fictional breaks were being given. He further urged that since the petitioner had remained in work for such a long period, it clearly goes to show that the work was of continuous/permanent nature. He also submitted that since the services of the petitioner had been disengaged without notice and retrenchment compensation, the same is illegal and unjustified for being in violation of the provisions of the Act. Further, as it stands proved on record that the juniors to the petitioner have been

engaged/retained in work, this also goes to show that there have been violation of the provisions of section 25G & H of the Act. Another contention, which has been advanced by the Ld. counsel is to this effect that since the respondent has not stepped into the witness box, there is no such material, whatsoever, on record, which could go to prove its defence. By merely examining one of the workers namely Shri Naresh Kumar (RW-1), the defence version that the petitioner had left the job, on his own, in order to work in some private firm, is not proved.

9. On the other hand, Ld. Counsel appearing on behalf of the respondent has urged with vehemence that the services of the petitioner had been engaged as a casual worker and that he left the work, on his own. Moreover, now the work stands completed. Thus, when the petitioner, on his own, had left the job and also that the work is complete, it cannot be said that there has been any violation of the provisions of the Act. In support of his contentions, the Ld. Counsel has relied upon **2008 ACJ 1700, Om Prakash Batish Vs. Ranjit and others, Latest HLJ 2006 HP 116, State of HP & others Vs. Presiding Judge & another and Latest HLJ 2006 834, State of HP & Ors. Vs. Bir Singh and another.**

10. Undoubtedly, Ld. Counsel for the respondent, by putting reliance on 2008 ACJ 1700 (supra) has urged that a person, who is employed for a limited period for carrying out repair work in a residential house, is not a workman but this ruling is of no help to the respondent because in the instant case it has not been proved that the services of the petitioner had been engaged for doing a work, which was for short/limited period. On the contrary, it is quite evident that the work, being performed by him (petitioner), was of continuous/permanent nature.

11. The stand of the respondent is that the petitioner was a casual labourer and that he had abandoned the work, on his own, in order to work on higher wages in the factories, being set up at Kala Amb. The respondents in support of their defence have examined Shri Naresh Kumar (RW-1), who tendered his affidavit Ex. R-1 in his chief examination. In his affidavit, he has stated that the petitioner had left the Temple Construction work, on his own, in June, 2007. When the Temple started new work, he (petitioner) had been sent a message through him (RW-1), to join the job but of no avail. In the cross examination, he stated that for the last 7 years, he has been working as Mason with the Temple Trust and that the petitioner had also been working alongwith him. He admitted that he (petitioner) had been engaged in the year, 2005. No written order/notice had been sent through him, to the petitioner, to join his duties. He admitted that his version is to this effect, that all the workers (about 100), had been terminated by the trust.

12. From the evidence, which has been led by the respondents, it has not been proved that the petitioner had abandoned the job, on his own. I may mention that the respondents have neither taken any steps to produce any documentary evidence that the petitioner has been employed in private unit at Kala Amb nor examined any person from that unit in support thereof. In these circumstances, the case law relied upon by the respondent (supra), has no applicability in the present case. It is also to be noted that the Ld. Counsel for the petitioner has rightly argued that since, the respondents have neither examined the Chairman or the Administrator of the respondents Trust, its defence that the petitioner had abandoned the job, on his own, is also not proved.

13. In his affidavit, Ex. P/A, the petitioner (PW-1), has supported all the material facts, on oath, including that he had worked for 240 days in each calendar year before his services had been terminated. He has denied that his services had been engaged, subject to the availability of work and that at present, he has been working with private Industries at Kala Amb.

14. According to Shri Harish Sharma (PW-2), Assistant Manager, Accounts, in the Temple Trust, the petitioner had been engaged as beldar in May, 2005 and worked till 1.7.2007, when his services had been disengaged, after the completion of work, without notice and compensation. S/Shri Jagat Singh, Chetan, Sita Ram and others are junior to the petitioner and that they are still working with the respondent. In the cross examination, he admitted that the petitioner had not been given regular appointment and that he had left the job, on his own. He further admitted that the petitioner had not completed 240 days in a calendar year.

15. The petitioner has led positive oral evidence to prove his assertion that he had completed 240 days in the twelve calendar months preceding his termination. Even, from the statement of Shri Harish Sharma (PW-2), it is revealed that he (petitioner) had worked from May, 2005 to 1.7.2007. In the affidavit of Shri Naresh Kumar (RW-1), it has not been stated that the petitioner had not completed 240 days in the twelve preceding months from the date of his termination. Thus, I hold that the petitioner has succeeded in proving that he had completed 240 days in the twelve calendar months preceding his termination.

16. From the statement of Shri Harish Sharma (PW-2), it is further borne out that juniors to the petitioner are still working with the respondent-Trust. Although, the contention of the respondent is to this effect that the petitioner had left the job, on his own, in order to work in private factories, on higher wages but there is no reliable and cogent evidence, on record, to prove this assertion, particularly, when the evidence, led by the petitioner, is convincing and reliable. It has been held by our own Hon'ble High Court in *latest HLJ 2007 (HP) 903 State of HP & Others Vs. Bhatag Ram & Another*. that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

17. From the evidence, on record, it also stands proved that the juniors to the petitioner are still in job. When such is the position, the termination of the services of the petitioner is in violation of the provisions of section 25G & H of the Act. It has been held by our own Hon'ble High Court in case titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

18. Since, on the record, it stands established that juniors to the petitioner, as mentioned above, are still in job, his termination, being in violation of the provisions of section 25 G & H of the Act, is illegal and unjustified and also for want of compliance of section 25F. Consequently, my answer to this issue is in “Yes” accordingly.

Issue No.2

19. Ld. Counsel for the petitioner has contended with vehemence that the petitioner is entitled for full back wages because his services had been terminated illegally and in unjustified manner. On the other hand, it has been argued on behalf of the respondents that since the petitioner has failed to prove that he is not gainfully employed, he cannot be granted back wages. In support of his such contention, Ld. counsel placed reliance *Latest HLJ 2007 (HP) 306, Pawan Kumar Vs. HP State Industrial Dev. Corporation & Aar* in which it has been held that ***“a workman is not entitle for back wages unless establish that he is not gainfully employed for which purpose, the burden is on him”***. Ld. Counsel has also relied upon *2010 (1) SLJ (SC), 70, M/s Reetu Marbles Vs. Prabhakant Shukla* in which it has been held that ***“Payment of full back wages upon an order of termination, being declared illegal, cannot be granted mechanically”***. It has been further held that ***“It does not automatically follow that reinstatement must be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”***.

20. In the instant case, the petitioner has not led any convincing and reliable evidence that after his disengagement/retranchment, he has not been gainfully employed. Moreover, keeping in view the period for which he had remained engaged and also the legal position, as stated above, I am of the considered view that he (petitioner) is not entitled to be granted back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated, with seniority and continuity in service but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue No.3

21. An objection has been taken by the respondent that this court has no jurisdiction to try this reference as the respondents Trust is not an Industry but this objection does not hold good in view of the law laid down by the *Constitutional Bench of Hon'ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water*

Supply and Sewerage Board Vs. A. Rajappa in which it has been held that educational institutions and research centres are Industries. It has further been held that a University is an Industry particularly with respect to small workers like Mali, Chowkidars, Carpenters etc. and as such on the strength of this judgment, it can be safely concluded that the respondents are governed by the Act, especially in case of the daily wage workers. Consequently, my answer to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 2.7.2007. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 25th June, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.
Camp at Nahan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT NAHAN.

Ref no. 17 of 2009.
Instituted on 4.4.2009.
Decided on. 25.6.2010.

Puran Chand S/o Parkash Chand, R/o Village Katola, P.O Sainwala, Tehsil Nahan, District Sirmour,
HP.

.....*Petitioner.*

VS.

1. The Deputy Commissioner, District Sirmour at Nahan-cum-Chairman, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP.
2. The SDM, Nahan, District Sirmour-cum-Administrator, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP.

..*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.K Khidta, Advocate.

For respondent: Shri A.K Rewal, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

"Whether termination of the services of Shri Puran Chand S/o Shri Parkash Chand, by the Chairman-cum-Deputy Commissioner, Sirmour at Nahan Maha Mai Balasundri, Trilokpur Temple, Trust, Tehsil Nahan, District Sirmour and ii) Administrator-cum-SDM Nahan, Maha Mai Baladundri, Trilokpur Temple Trust, Tehsil Nahan District Sirmour, HP without complying the mandatory provisions of the Industrial Disputes Act, 1947 I

legal and justified? If not, what relief of service benefits, including seniority, back wages and compensation, the above aggrieved workman is entitled to”.

2. In nutshell, the case of the petitioner is that he was engaged as Mason, by the Temple Trust Committee, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP, on daily wages in the month of Feb., 2004 and worked as such till 1.7.2007. On 2.7.2007, his services were orally terminated, by the Temple Administrator, without serving any notice and paying retrenchment compensation, in violation of the Provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act). Initially there was a Temple Committee which, in the year, 1999, was taken over by the Trust, which is headed by its Chairman (Deputy Commissioner). Thus, from the year 2004, the Temple Administration, has been under the Trust and respondent no.1, its Chairman, and respondent no.2, the Administrator. It is further averred that the petitioner had completed 240 days in each calendar year. Moreover, juniors to him namely S/Shri Ramesh, Prem Singh & Chaman are still working. In this way, he deserves to be reinstated with all the consequential benefits as his services have been terminated in violation of the mandatory provisions of the Act.

3. The claim of the petitioner has been contested on having raised preliminary objections including jurisdiction. On merits, it has been asserted that the petitioner had been engaged as casual worker by the respondents during the construction of their building. Since, new industries were being set up, at Kala Amb, he (petitioner) left the work, on his own, in order to work in the industries, on more wages. It has been denied that the services of the petitioner had been terminated by the respondents. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 28.8.2009.

1. Whether the termination of the services of the petitioner by Chairman-cum-Deputy Commissioner, Maha Mai Balasundri, Temple Trust, Tehsil Nahan & Administrator-cum-SDM, Nahan Maha Mai Balasundri, Temple Trust, Nahan, is illegal and unjustified as alleged?

OPP.....

2. If issue no.1 is proved, to what relief of service benefits including seniority and back wages, the petitioner is entitled to?

OPP.....

3. Whether this court has no jurisdiction to try this reference?

OPR.....

4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1	Yes.
Issue No.2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue No.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent, per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. Ld. Counsel for the petitioner has submitted that in order to defeat the provisions of the Act, so that the petitioner may not complete 240 days, fictional breaks were being given. He further urged that since the petitioner had remained in work for such a long period, it clearly goes to show that the work was of continuous/permanent nature. He also submitted that since the services of the petitioner had been disengaged without notice and retrenchment compensation, the same is illegal and unjustified for being in violation of the provisions of the Act. Further, as it stands proved on record that the juniors to the petitioner have been engaged/retained in work, this also goes to show that there have been violation of the provisions of section 25G & H of the Act. Another contention, which has been advanced by the Ld. counsel is to this effect that since the respondent has not stepped into the witness box, there is no such material, whatsoever, on record, which could go to prove its defence. By merely examining one of the workers namely Shri Ramesh Chand (RW-1), the defence version that the petitioner had left the job, on his own, in order to work in some private firm, is not proved.

9. On the other hand, Ld. Counsel appearing on behalf of the respondent has urged with vehemence that the services of the petitioner had been engaged as a casual worker and that he left the work, on his own. Moreover, now the work stands completed. Thus, when the petitioner, on his own, had left the job and also that the work is complete, it cannot be said that there has been any violation of the provisions of the Act. In support of his contentions, the Ld. Counsel has relied upon **2008 ACJ 1700, Om Prakash Batish Vs. Ranjit and others, Latest HLJ 2006 HP 116, State of HP & others Vs. Presiding Judge & another and Latest HLJ 2006 834, State of HP & Ors. Vs. Bir Singh and another.**

10. Undoubtedly, Ld. Counsel for the respondent, by putting reliance on 2008 ACJ 1700 (supra) has urged that a person, who is employed for a limited period for carrying out repair work in a residential house, is not a workman but this ruling is of no help to the respondent because in the instant case it has not been proved that the services of the petitioner had been engaged for doing a work, which was for short/limited period. On the contrary, it is quite evident that the work, being performed by him (petitioner), was of continuous/permanent nature.

11. The stand of the respondent is that the petitioner was a casual labourer and that he had abandoned the work, on his own, in order to work on higher wages in the factories, being set up at Kala Amb. The respondents in support of their defence have examined Shri Ramesh Chand (RW-1), who tendered his affidavit Ex. R-1 in his chief examination. In his affidavit, he has stated that the petitioner had left the Temple Construction work, on his own as he was employed by a private unit, M/s Pritam Electricals Pvt. Ltd. at Kala Amb. When the Temple started new work, he (petitioner) had been sent a message through him (RW-1), to join the job but of no avail. In the cross examination, he stated that for the last 10-11 years, he has been working as Mason with the Temple Trust and that the petitioner had also been working alongwith him. He admitted that he (petitioner) had been engaged in the year, 2004. No written order/notice had been sent through him, to the petitioner, to join his duties. He admitted that his version is to this effect, that all the workers (about 100), had been terminated by the trust.

12. From the evidence, which has been led by the respondents, it has not been proved that the petitioner had abandoned the job, on his own. I may mention that the respondents have neither taken any steps to produce any documentary evidence that the petitioner has been employed in private unit at Kala Amb nor examined any person from that unit in support thereof. In these circumstances, the case law relied upon by the respondent (supra), has no applicability in the present case. It is also to be noted that the Ld. Counsel for the petitioner has rightly argued that since, the respondents have neither examined the Chairman or the Administrator of the respondents Trust, its defence that the petitioner had abandoned the job, on his own, is also not proved.

13. In his affidavit, Ex. P/A, the petitioner (PW-1), has supported all the material facts, on oath, including that he had worked for 240 days in each calendar year before his services had been terminated. He has denied that his services had been engaged, subject to the availability of work and that at present, he has been working with private Industries at Kala Amb.

14. According to Shri Harish Sharma (PW-2), Assistant Manager, Accounts, in the Temple Trust, the petitioner had been engaged as beldar in Feb., 2004 and worked till 30.6.2007, when his services had been disengaged, after the completion of work, without notice and compensation. S/Shri Jagat Singh, Chetan, Sita Ram and others are junior to the petitioner and that they are still working with the respondent. In the cross examination, he admitted that the petitioner had not been given regular appointment and that he had left the job, on his own. He further admitted that the petitioner had not completed 240 days in a calendar year.

15. The petitioner has led positive oral evidence to prove his assertion that he had completed 240 days in the twelve calendar months preceding his termination. Even, from the statement of Shri Harish Sharma (PW-2), it is revealed that he (petitioner) had worked from Feb., 2004 to 30.6.2007. In the affidavit of Shri Ramesh Chand (RW-1), it has not been stated that the petitioner had not completed 240 days in the twelve preceding months from the date of his termination. Thus, I hold that the petitioner has succeeded in proving that he had completed 240 days in the twelve calendar months preceding his termination.

16. From the statement of Shri Harish Sharma (PW-2), it is further borne out that juniors to the petitioner are still working with the respondent-Trust. Although, the contention of the respondent is to this effect that the petitioner had left the job, on his own, in order to work in private factories, on higher wages but there is no reliable and cogent evidence, on record, to prove this assertion, particularly, when the evidence, led by the petitioner, is convincing and reliable. It has been held by our own Hon'ble High Court in *latest HLJ 2007 (HP) 903 State of HP & Others Vs. Bhatag Ram & Another*. that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

17. From the evidence on record, it also stands proved that the juniors to the petitioner are still in job. When such is the position, the termination of the services of the petitioner is in violation of the provisions of section 25G & H of the Act. It has been held by our own Hon'ble High Court in case titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

18. Since, on the record, it stands established that juniors to the petitioner, as mentioned above, are still in job, his termination, being in violation of the provisions of section 25 G & H of the Act, is illegal and unjustified and also for want of compliance of section 25F. Consequently, my answer to this issue is in “Yes” accordingly.

Issue No.2

19. Ld. Counsel for the petitioner has contended with vehemence that the petitioner is entitled for full back wages because his services had been terminated illegally and in unjustified manner. On the other hand, it has been argued on behalf of the respondents that since the petitioner has failed to prove that he is not gainfully employed, he cannot be granted back wages. In support of his such contention, Ld. counsel placed reliance *Latest HLJ 2007 (HP) 306, Pawan Kumar Vs. HP State Industrial Dev. Corporation & Aar* in which it has been held that “a workman is not entitle for back wages unless establish that he is not gainfully employed for which purpose, the burden is on him”. Ld. Counsel has also relied upon *2010 (1) SLJ (SC), 70, M/s Reetu Marbles Vs. Prabhakant Shukla* in which it has been held that “Payment of full back wages upon an order of termination, being declared illegal, cannot be granted mechanically”. It has been further held that “It does not automatically follow that reinstatement must be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”.

20. In the instant case, the petitioner has not led any convincing and reliable evidence that after his disengagement/retranchment, he has not been gainfully employed. Moreover, keeping inview the period

for which he had remained engaged and also the legal position, as stated above, I am of the considered view that he (petitioner) is not entitled to be granted back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated, with seniority and continuity in service but without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue No.3

21. An objection has been taken by the respondent that this court has no jurisdiction to try this reference as the respondents Trust is not an Industry but this objection does not hold good in view of the law laid down by the ***Constitutional Bench of Hon'ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa*** in which it has been held that educational institutions and research centres are Industries. It has further been held that a University is an Industry particularly with respect to small workers like Mali, Chowkidars, Carpenters etc. and as such on the strength of this judgment, it can be safely concluded that the respondents are governed by the Act, especially in case of the daily wage workers. Consequently, my answer to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 2.7.2007. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 25th June, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.
Camp at Nahan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref no. 18 of 2002
Instituted on 17.1.2002.
Decided on. 9.6.2010.

Prem Chand S/o Shri Bhagirath R/o Village Druman, P.O Kuanr, Tehsil Arki, District Solan, HP.
..Petitioner.

VS.

The General Manager CMC Ltd. Jeevan Vihar-3, Sansad Marg, New Delhi 110001.
Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Shashi Shirshoo, Advocate.

For respondent: Shri Sandeep Mahajan, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Prem Chand (Care Taker) S/o Shri Bhagirath w.e.f. 28.4.1997 after completing one month leave but not accepting the

resuming of duty after leave by the General Manager, CMC Ltd. Jeevan Vihar, Sansad Marg, New Delhi, 110001 and without complying the provisions of the Industrial disputes Act, 1947 is proper and justified? If not, what relief of service benefits i.e salary, continuation of service and compensation, the above workman is entitled to?"

2. Briefly, the case of the petitioner is that, he had joined as care taker with the respondent, CMC Ltd. Holiday Home, Hira Mount Murray Field Estate, Nav Bahar, Chowk Chotta Shimla (hereinafter referred respondent/Holiday Home), in May 1986 and worked continuously, without any break till May, 1997. Initially, his salary was Rs. 400/- per month. However, from time to time, the same was being revised and that lastly, he was drawing Rs. 2800/- per month when his services were dispensed with by the respondent. Although, he had also worked over time but the wages to this effect were not paid to him and that the same come to Rs. 2,35,000/- @ Rs. 7.00 per hour. In the Holiday Home, he used to do all types of work such as booking, cooking, management etc. In the month of May, 1997, he was on leave for one month and that on 1.6.1997, when he came to join the duties, he was told that his services stood terminated w.e.f. 21.5.1997 and that the same are no longer required. In each calendar year, he had completed 240 days. Since, his services had been terminated without any notice and compensation in violation of the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred Act), he deserves to be reinstated in service with all the consequential benefits.

3. The claim has been contested on having raised preliminary objections including maintainability, time barred and suppressing material facts. On merits, it has been pleaded that although, the petitioner was working in he Holiday Home but he had never been employed as Care Taker/workman by the respondent. In fact, he was working as a part time worker, as and when his services were required, in the peak season. It is further maintained that he was the employee of M/s Hemkunt Company, New Delhi (hereinafter referred as Company) and that in order to run the Holiday Home, the respondent had engaged the services of the Company which was dealing in providing various security and personnel services to different companies. The respondent had also approached the Company for providing a care taker for the Holiday Home and thereafter, the Company engaged the services of the petitioner as care taker. The wages, allowances and other benefits were being paid to the petitioner by the Company, directly. At no point of time, the respondent had engaged or paid any wages to the petitioner. It is specifically denied that the petitioner had worked continuously and without any break, since May, 1986 to May, 1997. Further, at no point of time, the respondent had executed any agreement in respect of the terms and conditions of the services of the petitioner. Since, the salary to the petitioner was being paid by the Company, his alleged claim for the arrears is absolutely wrong and incorrect. As per the information of the respondent, the petitioner had already settled his account with the Company on 24.4.1997 towards full & final settlement. Since, he had already settled his claim, there was no occasion for him to have come and join the services again in the month of June, 1997. The petitioner, under section 15(2) of the payment of wages Act, had also filed a petition, before the Executive Magistrate, Shimla which was dismissed.

4. By filing rejoinder, he has reiterated that he had remained the worker/employee of the respondent, by specifically denying that his services had been engaged by the Company and that on 24.4.1997, he had settled his claim as full & final. Other pleas, as taken up by the respondent, also denied, by further reaffirming his own allegations.

5. Pleading of the parties, gave rise to the following issues, which were struck on 5.12.2005.

1. Whether the petitioner has been wrongly retrenched by respondent in May, 1997 without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect?

OPP.....

2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to?

OPP.....

3. Whether the petition is bad for non joinder and misjoinder of necessary parties?

OPR.....

4. Whether there is no relationship of employee and employer between the parties? If so, its effect?
OPR.....
5. Whether the petition is not maintainable, in view of similar case, decided by SDM, Shimla?
OPR.....
6. Relief.
6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.
7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.
- | | |
|------------|---|
| Issue No.1 | No |
| Issue No.2 | becomes redundant. |
| Issue No.3 | Yes. |
| Issue No.4 | Yes. |
| Issue No.5 | No. |
| Relief. | Reference answered against the petitioner, per operative part of award. |

REASONS FOR FINDINGS.

Issue No.1

8. The contention of the petitioner is to this effect that his services had been engaged as Care Taker by the respondent for its Holiday Home situated at Navbahar Chowk, Chotta Shimla, in the month of May, 1986.

9. The defence version is that he (petitioner) was the employee of the Company, whose services had been provided to the respondent, as Care Taker, for the Holiday Home and that the wages and other allowances were also being paid to him by the Company.

10. The deposition of the petitioner (PW-1), is to this effect that on 26.5.1986, he had been engaged as Care Taker by the respondent and worked as such till 31.5.1997, when his services were terminated without notice and payment of compensation. In every calendar year, he had worked for more than 240 days. In the cross examination, he has stated of having filed his appointment letter on the record. He denied that to the respondent, he had not applied for job and that he had not completed 240 days in any calendar year preceding his termination. He further denied that he had been appointed through the Company and that his services were being taken only during peak season. He further denied of having settled his claim as full & final with the company.

11. Shri Hari Ram (PW-2), had worked with the Company as Sweeper w.e.f. Jan. 1993 to April, 1996. According to him, he knows the petitioner, who had been working as Care Taker with the respondent prior to his (PW's) joining. They used to draw salary, from Shri Ashok Pipal, Administrative Officer of the Company, at Shimla. In the cross examination, he stated that he used to draw salary in cash from Shri Ashok Pipal. The petitioner used to receive salary through bank Draft from Delhi. He denied that the Bank Draft was being sent by the Company and that the petitioner had been its employee.

12. Shri Sachin Sunder (RW-1), has produced the authority letter Ex. RW-1/A. According to him, the petitioner used to work with the respondent but he was the employee of the Company who used to pay him (petitioner) salary. With the Company, he (petitioner) had effected a compromise. The case, which the petitioner had filed against the respondent for payment of wages has been dismissed by the Executive Magistrate, Shimla, as per the copy of order, Ex. RW-1/B. The petitioner was not their employee. In the cross examination, he admitted that he (petitioner) had worked from May, 1986 to May, 1997. He expressed his lack of knowledge that in the year 1997, the petitioner had availed leave for one month and that when he

came to join his duties, he was not allowed to do the same. Envelop of letter dated 22.8.1996, is of respondent which is Ex. R-1/A-2.

13. The petitioner has not brought, on record, any such documentary evidence which could go to show that on having applied to the respondent, his services had been engaged as Care Taker for the Holiday Home situated in Navbahar Chowk, Chotta Shimla. Even, no appointment letter has been brought on record. I would also like to observe that the petitioner has neither brought on record the attendance register nor took any steps to get such register produced, before this Court, in order to show that being an employee/worker of the respondent, he had been marking his presence. Further, neither in the petition nor while appearing in the witness box as PW-1, he has stated that in what manner the salary/wages were being paid to him. In the statement of Shri Hari Ram (PW-2), it has come that the respondent used to pay his salary, in cash, through Shri Ashol Pipal, during the period, he remained engaged as sweeper with the respondent. According to him, the petitioner used to receive his salary through Bank Draft from Delhi. Undoubtedly, he has denied that the salary to the petitioner was being sent by the Company but from his such deposition, it is quite apparent that the petitioner was not being paid salary, in cash, by Shri Ashok Pipal, Administrative Officer of the respondent. The petitioner has also not brought on record any such evidence that before proceeding on one month's leave, he had applied to the respondent. As a matter of fact, the petitioner has failed to bring on record any such document which could go to show that he had been employed/engaged by the respondent and that it was the respondent who used to pay him the salary/wages. In the absence of such proof, the plea of the respondent which has been duly supported by Shri Sachin Sunder (RW-1), deserves to be believed and relied upon. At this stage, I would like to point out that the best evidence which the petitioner was required to adduce before this Court could have been regarding the payment of wages, by the respondent, to him, either in cash or through Bank Draft. In case, he was being paid salary/wages in cash, he could have proved this fact by getting summoned the salary register, maintained by the respondent, on which he used to put his signatures in token on having received the salary. If the mode of payment of salary/wages was through Bank Draft/cheque by the respondent, this fact could be proved from the records of the concerned Bank. But the petitioner has failed to do so. Consequently, I hold that the petitioner has failed to prove that he was the employee of the respondent.

14. It has been alleged by the petitioner that in each calendar year, he had completed 240 days. The defence version is that his (petitioner) services were being engaged as Care Taker only during peak season, through the Company. The petitioner (PW-1) has stated that in every calendar year, he used to work for more than 240 days but for proving the violation of section 25F of the Act, it was required of him to have proved that in the twelve calendar months preceding his termination, he had completed 240 days. In the instant case, the petitioner (PW-1) has admitted of not having produced any record which could go to show that in each calendar year, he had worked for 240 days including the year preceding his termination. It has been held by **the Hon'ble Supreme Court in 2009 (120) FLR 1007, Ranip Nagar Palika Vs. Babuji Gabhaji, Thakore & others** that:

"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove that the factum of being in employment of the employer".

To the similar effect, the law has been laid down by **Hon'ble Supreme Court in 2008 LLR 549, Sita Ram & others Vs. Moti Lal Nehru Farmers Training Institute.**

15. From the evidence, which has been led by the petitioner, he has also not succeeded in proving that before his termination, he had worked for 240 days in the twelve calendar months, under the respondent. Consequently, I, without hesitation, hold that the petitioner has failed to prove that his services had been wrongly retrenched by the respondent, in contravention of the provisions of the Act. Accordingly, my answer to his issue is in "No".

Issue No.2

16. In view of my findings, on issue no.1, above, this issue becomes redundant.

Issue No.3

17. From the very beginning, the stand of the respondent is that the petitioner had been engaged by the Company. Although, this defence version has been denied by the petitioner but it has been specifically stated by Sachin Sunder (RW-1), that the petitioner is the employee of the Company and that he was being paid salary by it. Even, from the evidence of Shri Hari Ram (PW-2), it is revealed that the salary to the petitioner was being sent from Delhi through Bank Draft. In these circumstances, when the petitioner has failed to prove that his services had been engaged by the respondent, the defence plea that he was the employee of the Company assumes significance. For the just and proper decision of this case, Company was the necessary party. Definitely, this claim of the petitioner, without having impleaded the Company (Himkund) is bad for non joinder of necessary parties. By holding so, my answer to this issue is in "No".

Issue No. 4

18. While deciding issue no.1, I have touched/discussed relevant evidence regarding the alleged relationship of employee and employer between the parties. Since, the petitioner has failed to bring on record, the appointment letter, having been issued by the respondent and also that he was being paid wages/salary by it, as well as my detailed discussion while deciding issue no.1, I hold that there is no relationship of employee and employer between the petitioner and respondent. Accordingly, my answer to this issue is in "No".

Issue No. 5

19. Ex. RW-1/B, is the copy of order passed by the Executive Magistrate, Shimla (SDM), in an application under section 15(2) of the payment of wages Act, 1936 for realization of wages, filed by the petitioner. Its perusal goes to show that the application, so filed by the petitioner, had been dismissed. In my considered view, the dismissal of the said application has no relevancy, whatsoever, as far as the present claim of the petitioner is concerned because the same is regarding the alleged entitlement of the petitioner for reinstatement in service alongwith consequential benefits. Apart from this, I may mention that the claim of the petitioner, which has been filed by him, is in pursuance of the reference, made to this Court, by the Labour Commissioner, which requires to be answered by this Court. Thus, I hold that this petition is maintainable despite the order, as aforesaid, passed by the Executive Magistrate, Shimla, attested copy of which is Ex. RW-1/B. Accordingly, this issue is decided in negative.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against the petitioner and in favour of respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 9th June, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT NAHAN

Ref no. 18 OF 2009.
Instituted on 4.4.2009.
Decided on. 25.6.2010.

Rattan Singh S/o Shri Ram Swaroop, R/o Village Kandiwala, P.O Verma Papri, Tehsil Nahan,
District Sirmour, HP.

..Petitioner.

VS.

1. The Deputy Commissioner, District Sirmour at Nahan-cum-Chairman, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP.
2. The SDM, Nahan, District Sirmour-cum-Administrator, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.K Khidta, Advocate.

For respondent: Shri

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

“Whether termination of the services of Shri Rattan Singh S/o Shri Ram Swaroop, by the Chairman-cum-Deputy Commissioner, Sirmour at Nahan Maha Mai Balasundri, Trilokpur Temple, Trust, Tehsil Nahan, District Sirmour and ii) Administrator-cum-SDM Nahan, Maha Mai Baladundri.

2. In nutshell, the case of the petitioner is that he was engaged as daily wage beldar on 18.2.1982 and worked as such for the construction and repair of HPSEB line under Chopal Division. In the month of March, 1986, his services were terminated without assigning any reason. On his requests, he was reengaged on 1.8.1996 and worked till 31.12.1996, when his services were again terminated, without assigning any reason. It has been alleged that his juniors namely Dulchi Ram, Ravinder singh, Roshan Lal and Murat Singh, continued to remain in job. Since, his services were terminated in violation of the provisions of section 25F, 25G & H of the Industrial Disputes Act, 1947 (hereinafter referred Act), he deserves to be reinstated in service with all consequential benefits.

3. The claim of the petitioner has been contested on having raised various preliminary objections including maintainability and limitation. On merits, it has been asserted that the petitioner had been engaged on 26.1.1982 and not on 8.2.1982 as alleged and that he continued to work till 25.10.1982, when he left the job, on his own. On 26.3.1984, he was reengaged and worked till 25.8.1984, when he again left the job on his own. Thereafter, he was again reengaged on 4.8.1996 and continued to work till 25.1.1998 with some breaks. The services of the petitioner had never been terminated. On the contrary, he had left the job, on his own, without assigning any reason. During the period, he remained in job, he had availed wilful breaks. In no calendar year, he had completed 240 days. It has been denied that the juniors to the petitioner have been retained in job. The persons, who have been named by the petitioner, are senior to him. Further, Since they had not left the job, they continued to remain on the rolls of the respondent. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 2.12.2005.

1. Whether the services of the petitioner have been illegally terminated by respondent without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect?

OPP.....

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to?

OPP.....

3. Whether the petition in the present form is not maintainable?

OPR.....

4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1	Yes.
Issue No.2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue No.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent, per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. The petitioner has assailed his termination w.e.f. 1.3.1998, on two grounds, i.e. his services were terminated in violation of the provisions of section 25F of the Act and also that his juniors are still in service and for this reason, his termination has been in violation of the provisions of section 25G & H of the Act.

9. On the contrary, the defence version is to this effect that at no point of time, the services of the petitioner had been terminated, but on each occasion, he had left the services on his own. It has been denied that the persons junior to the petitioner, as named, have been retained in service.

10. While appearing in the witness box as PW-1, the petitioner has supported all the material facts including that juniors to him namely S/Shri Dulchi Ram, Ravinder, Kalyan etc. are still in job. He further stated that the respondent, intentionally, terminated his service, so that he could not complete 240 days in any calendar year and also used to give him breaks during the period when he remained in job. Before terminating his services, neither any notice had been given to him nor compensation. In the cross-examination, he admitted of not having completed 240 days in any calendar year but denied to have left the job, on his own and also that his juniors are not in job.

11. Shri Bansilal, RW-1, has proved the mandays chart Ex. RA of the petitioner. According to him, the services of the petitioner had never been terminated by the respondent but he left the job, on his own. No juniors to the petitioner have been engaged by the respondent when the petitioner left the job. In the cross examination, he has stated that, orally the petitioner had been asked to resume his duties. He denied that Ravinder Singh etc. are juniors to the petitioner.

12. I may point out that, it has been alleged by the petitioner that his services have been terminated in violation of section 25F of the Act but neither from his oral evidence nor documentary evidence, on record, including Ex. RA (mandays chart), it has been proved that in the twelve calendar months preceding his termination, he had completed 240 days. The provisions of section 25F were required to be complied with by the respondent, only if, the petitioner had completed 240 days preceding his termination. Since, it has not proved that he had completed 240 days in any calendar year, including twelve calendar months preceding his termination, his alleged termination cannot be said to be illegal & unjustified for violation of the provisions of section 25F of the Act. It has been specifically stated by the petitioner (PW-1) that juniors to him namely Dulchi Ram, Ravinder kalia etc. are still working with the respondent and that he had never left the job, on his own. Since, the plea taken by respondent is to this effect that the petitioner had, himself, left the job, it was required of the respondent to have proved this fact by cogent and reliable evidence. In the statement of Shri Bansilal (RW-1), it has come that no notice had been sent to the petitioner to resume his duties. Undoubtedly, he has also stated that, orally, he (petitioner) had been asked to resume duties but his such version does not inspire confidence for want of independent

corroboration/support. It has been held by our own Hon'ble High Court in latest *HLJ 2007 (HP) 903 State of HP & Others Vs. Bhatag Ram & Another*. that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

13. Thus, keeping in view the evidence on record as well as law laid down in the ruling (supra), I have no hesitation in holding that the respondent has failed to prove that the petitioner had left the job on his own.

14. In the petition, the names of S/Shri Ravinder Singh, Roshan Lal, Dulchi Ram, Murat Singh & Kalyan Singh have been specifically mentioned in para 2, who, as per the petitioner, are junior to him and still in job. In his statement, before this court, as PW-1, he (petitioner) has supported this fact on oath. The respondent has not brought on record any such documentary proof which could go to show that the above named persons are either not junior to the petitioner or that they are not still in job with the respondent. In the absence of any such evidence, led by the respondent, the evidence led by the petitioner to the effect that his juniors are still in service, is required to be believed and relied upon. It has been held by our own Hon'ble High Court in case titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

15. Since, on the record, it stands established that juniors to the petitioner, as mentioned above, are still in job, his termination, being in violation of the provisions of section 25 G & H of the Act, is illegal and unjustified. Consequently, my answer to this issue is in “Yes” accordingly.

Issue No.2

16. Since, the petitioner has failed to prove that he has not been gainfully employed after his termination, I, without hesitation, hold that he is not entitled for back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated, with seniority and continuity in service but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue No. 3

17. It is not understandable as to why this petition is not maintainable in the present form, particularly, when it has been filed in pursuance to the reference made to this Court by the Labour Commissioner. Apart from it, the learned counsel for respondent could not explain as to why this petition is not maintainable in the present form. Accordingly, by holding it to be maintainable, my answer to this issue is in “No”.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 1.3.1998. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 8th June, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref no. 19 of 2007.
Instituted on 16.3.2007.
Decided on. 5.6.2010.

HP. Mela Ram S/o Shri Vija Ram R/o Village & P.O Shivan, Tehsil, Kumarsain District Shimla,

..Petitioner.

VS.

The Executive Engineer, Electrical Division, HPSEB Kumarsain, District Shimla, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri H.C Sharma, Advocate.

For respondent: Ms. Sharmila Patial, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the termination of services of Shri Mela Ram S/o Shri Vija Ram workman by the Executive Engineer, Electrical Division, HPSEB, Kumarsain, District Shimla, HP w.e.f. 25.3.1998 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to”.

2. Briefly, the case of the petitioner is that he was engaged as daily wager in the year 1994 at electrical Sub Division, HPSEB, Baragaon, where he remained till September, 1997. Thereafter, he was posted under Asistant Engineer, Electrical Sub Division, Thanadhar and continued during the year 1998 when his services were orally disengaged. It is alleged that juniors to him namely S/Shri Ram Lal Budh Ram, Chaman Lal, Ghanshyam, Satyadev and Jag Dev are still in job. In order to deprive him from being regularized, his services were disengaged arbitrarily. It is further asserted that he had also assailed his illegal termination before the Administrative Tribunal. For the reason that his services had been illegally disengaged, he deserve to be reinstated with all consequential benefits.

3. The claim of the petitioner has been contested on the plea that he had left the job on 25.1.1995, from Electrical Sub Division, HPSEB Baragaon. He again got enrolled his name under Assistant Engineer, Electrical Sub Division, HPSEB Kumarsain w.e.f. 25.2.1996 onward and worked till 24.9.1997. Again, he got himself enrolled under Electrical Sub Division, HPSEB Thanadhar on 7.1.1998 where he worked upto 24.3.1998. His services stood automatically disengaged because he had been engaged for doing seasonal work and that the same came to an end and that there were no further funds. The petitioner had not completed 240 days. It has been denied that juniors to the petitioner are still in job. O.A which had been filed by the petitioner stood dismissed as withdrawn on 18.12.2003. Other allegations denied.

4. By filing rejoinder, the petitioner reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 3.1.2008.

1. Whether the services of the petitioner have been illegally terminated w.e.f. 25.3.1998 without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect?

OPP.....

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? OPP.....
3. Whether the petition in the present form is not maintainable? OPR.....
4. Relief.
6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.
7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.
- | | |
|------------|---|
| Issue No.1 | Yes. |
| Issue No.2 | Entitled to reinstatement in service with seniority and continuity but without back wages. |
| Issue No.3 | No. |
| Relief. | Reference answered in favour of the petitioner and against the respondent, per operative part of award. |

REASONS FOR FINDINGS

Issue No.1

8. Ex. PR-1, the mandays chart of the petitioner, goes to show that he had worked w.e.f. 25.6.1992 to 24.3.1998, as per number of days, mentioned in the same. Its perusal goes to show that preceding twelve calendar months from the date of his alleged termination, he had not completed 240 days. Although, in his statement, made before this Court, the petitioner has stated of having completed 240 days in every calendar year preceding his termination but his such version cannot be believed on the face of documentary evidence (Ex. PR-1). Even Shri Kehar Singh (PW-1/PW-3), who has been examined by the petitioner, does not support this fact that he had completed 240 days in any calendar year preceding his termination. Thus, the alleged termination of the petitioner in violation of section 25F of the Act cannot be said to have been proved on record.

9. Another plea, taken by the petitioner is that juniors to him are still in service and in his statement before this Court as PW-2, he has stated this fact, on oath, by deposing that S/Shri Satya Dev, Ghanshyam, Puran Vir, Chaman Lal & others, who are junior to him are still in job and are still working. His such version, on this score, has gone unchallenged for want of cross examination. Even Shri Kehar Singh (PW-1/PW-3), supports this fact that, six beldars, who have been engaged, alongwith the petitioner, are still working on the order of Administrative Tribunal. From the statement of Shri D. Padam (RW-1), it is revealed that juniors to the petitioner are working in the department because they have completed 240 days in a calendar year.

10. From the evidence, as discussed above, it stands proved that juniors to the petitioner are still in job. Undoubtably, in the statement of Shri Kehar Singh (PW-1/PW-3), it has come that juniors to the petitioner are in job on the order of Administrative Tribunal but his such version does not go to weaken the case of the petitioner as far as the contravention of the provisions of section 25G & H is concerned. Moreover, no such documentary evidence has been brought on record which could go to show that their services have been retained/engaged on the orders of the State Tribunal. It has been held by our own Hon'ble High Court in case titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

11. Since, on the record, it stands established that juniors to the petitioner, as mentioned above, are still in job, his termination, being in violation of the provisions of section 25 G & H of the Act, is illegal and unjustified. Consequently, my answer to this issue is in "Yes" accordingly.

Issue no.2

12. Since, the petitioner has failed to prove that he has not been gainfully employed after his termination, I, without hesitation, hold that he is not entitled for back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated, with seniority and continuity in service but without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue no.3

13. It is not understandable as to why this petition is not maintainable in the present form, particularly, when it has been filed in pursuance to the reference made to this Court by the Labour Commissioner. Apart from it, the learned counsel for the respondent could not explain as to why this petition is not maintainable in the present form. Accordingly, by holding it to be maintainable, my answer to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 25.3.1998. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 5th June, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT NAHAN.

Ref no. 19 of 2009.
Instituted on 4.4.2009.
Decided on. 25.6.2010.

Dhani Ram S/o Atara Ram, R/o Village Dhakara, P.O Verma Papri, Tehsil Nahan, District Sirmour, HP.

Petitioner.

VS.

1. The Deputy Commissioner, District Sirmour at Nahan-cum-Chairman, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP.
2. The SDM, Nahan, District Sirmour-cum-Administrator, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP.

Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.K Khidta, Advocate.
For respondent: Shri A.K Rewal, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

***“Whether termination of the services of Shri Husain Singh S/o Dhakara Ram, by the Chairman-cum-Deputy Commissioner, Sirmour at Nahan Maha Mai Balasundri, Trilokpur Temple, Trust, Tehsil Nahan, District Sirmour and ii) Administrator-cum-SDM Nahan, Maha Mai Baladundri, Trilokpur Temple Trust, Tehsil Nahan District Sirmour, HP without complying the mandatory provisions of the Industrial Disputes Act, 1947 I legal and justified? If not, what relief of service benefits, including seniority, back wages and compensation, the above aggrieved workman is entitled to”. ***

2. In nutshell, the case of the petitioner is that he was engaged as beldar, by the Temple Trust Committee, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP, on daily wages in the month of September, 2004 and worked as such till 18.7.2007. On 19.7.2007, his services were orally terminated, by the Temple Administrator, without serving any notice and paying retrenchment compensation, in violation of the Provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act). Initially there was a Temple Committee which, in the year, 1999, was taken over by the Trust, which is headed by its Chairman (Deputy Commissioner). Thus, from the year 2004, the Temple Administration, has been under the Trust and respondent no.1, its Chairman, and respondent no.2, the Administrator. It is further averred that the petitioner had completed 240 days in each calendar year. Moreover, juniors to him namely S/Shri Jagat Ram & Ramesh Kumar are still working. In this way, he deserves to be reinstated with all the consequential benefits as his services have been terminated in violation of the mandatory provisions of the Act.

3. The claim of the petitioner has been contested on having raised preliminary objections including jurisdiction. On merits, it has been asserted that the petitioner had been engaged as casual worker by the respondents during the construction of their building. Since, new industries were being set up, at Kala Amb, he (petitioner) left the work, on his own, in order to work in the industries, on more wages. It has been denied that the services of the petitioner had been terminated by the respondents. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 28.8.2009.

1. Whether the termination of the services of the petitioner by Chairman-cum-Deputy Commissioner, Maha Mai Balasundri, Temple Trust, Tehsil Nahan & Administrator-cum-SDM, Nahan Maha Mai Balasundri, Temple Trust, Nahan, is illegal and unjustified as alleged?

OPP.....

2. If issue no.1 is proved, to what relief of service benefits including seniority and back wages, the petitioner is entitled to?

OPP.....

3. Whether this court has no jurisdiction to try this reference?

OPR.....

4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent, per operative part of award.

REASONS FOR FINDINGS

Issue no.1

8. Ld. Counsel for the petitioner has submitted that in order to defeat the provisions of the Act, so that the petitioner may not complete 240 days, fictional breaks were being given. He further urged that since the petitioner had remained in work for such a long period, it clearly goes to show that the work was of continuous/permanent nature. He also submitted that since the services of the petitioner had been disengaged without notice and retrenchment compensation, the same is illegal and unjustified for being in violation of the provisions of the Act. Further, as it stands proved on record that the juniors to the petitioner have been engaged/retained in work, this also goes to show that there have been violation of the provisions of section 25G & H of the Act. Another contention, which has been advanced by the Ld. counsel is to this effect that since the respondent has not stepped into the witness box, there is no such material, whatsoever, on record, which could go to prove its defence. By merely examining one of the workers namely Shri Ramesh Chand (RW-1), the defence version that the petitioner had left the job, on his own, in order to work in some private firm, is not proved.

9. On the other hand, Ld. Counsel appearing on behalf of the respondent has urged with vehemence that the services of the petitioner had been engaged as a casual worker and that he left the work, on his own. Moreover, now the work stands completed. Thus, when the petitioner, on his own, had left the job and also that the work is complete, it cannot be said that there has been any violation of the provisions of the Act. In support of his contentions, the Ld. Counsel has relied upon **2008 ACJ 1700, Om Prakash Batish Vs. Ranjit and others, Latest HLJ 2006 HP 116, State of HP & others Vs. Presiding Judge & another and Latest HLJ 2006 834, State of HP & Ors. Vs. Bir Singh and another.**

10. Undoubtedly, Ld. Counsel for the respondent, by putting reliance on 2008 ACJ 1700 (supra) has urged that a person, who is employed for a limited period for carrying out repair work in a residential house, is not a workman but this ruling is of no help to the respondent because in the instant case it has not been proved that the services of the petitioner had been engaged for doing a work, which was for short/limited period. On the contrary, it is quite evident that the work, being performed by him (petitioner), was of continuous/permanent nature.

11. The stand of the respondent is that the petitioner was a casual labourer and that he had abandoned the work, on his own, in order to work on higher wages in the factories, being set up at Kala Amb. The respondents in support of their defence have examined Shri Naresh Kumar (RW-1), who tendered his affidavit Ex. R-1 in his chief examination. In his affidavit, he has stated that the petitioner had left the Temple Construction work, on his own as he was employed by a private unit, M/s Pritam Electricals Pvt. Ltd at Kala Amb. When the Temple started new work, he (petitioner) had been sent a message through him (RW-1), to join the job but of no avail. In the cross examination, he stated that for the last 7 years, he has been working as Mason with the Temple Trust and that the petitioner had also been working alongwith him. He admitted that he (petitioner) had been engaged in the year, 2004. No written order/notice had been sent through him, to the petitioner, to join his duties. He admitted that his version is to this effect, that all the workers (about 100), had been terminated by the trust.

12. From the evidence, which has been led by the respondents, it has not been proved that the petitioner had abandoned the job, on his own. I may mention that the respondents have neither taken any steps to produce any documentary evidence that the petitioner has been employed in private unit at Kala Amb nor examined any person from that unit in support thereof. In these circumstances, the case law relied upon by the respondent (supra), has no applicability in the present case. It is also to be noted that the Ld. Counsel for the petitioner has rightly argued that since, the respondents have neither examined the Chairman or the Administrator of the respondents Trust, its defence that the petitioner had abandoned the job, on his own, is also not proved.

13. In his affidavit, Ex. P/A, the petitioner (PW-1), has supported all the material facts, on oath, including that he had worked for 240 days in each calendar year before his services had been terminated. He has denied that his services had been engaged, subject to the availability of work and that at present, he has been working with private Industries at Kala Amb.

14. According to Shri Harish Sharma (PW-2), Assistant Manager, Accounts, in the Temple Trust, the petitioner had been engaged as beldar in September, 2004 and worked till 18.7.2007, when his services had been disengaged, after the completion of work, without notice and compensation. S/Shri Jagat Singh, Chetan, Sita Ram and others are junior to the petitioner and that they are still working with the respondent. In the cross examination, he admitted that the petitioner had not been given regular appointment and that he had left the job, on his own. He further admitted that the petitioner had not completed 240 days in a calendar year.

15. The petitioner has led positive oral evidence to prove his assertion that he had completed 240 days in the twelve calendar months preceding his termination. Even, from the statement of Shri Harish Sharma (PW-2), it is revealed that he (petitioner) had worked from September, 2004 to 18.7.2007. In the affidavit of Shri Naresh Kumar (RW-1), it has not been stated that the petitioner had not completed 240 days in the twelve preceding months from the date of his termination. Thus, I hold that the petitioner has succeeded in proving that he had completed 240 days in the twelve calendar months preceding his termination.

16. From the statement of Shri Harish Sharma (PW-2), it is further borne out that juniors to the petitioner are still working with the respondent-Trust. Although, the contention of the respondent is to this effect that the petitioner had left the job, on his own, in order to work in private factories, on higher wages but there is no reliable and cogent evidence, on record, to prove this assertion, particularly, when the evidence, led by the petitioner, is convincing and reliable. It has been held by our own Hon'ble High Court in *latest HLJ 2007 (HP) 903 State of HP & Others Vs. Bhatag Ram & Another*. that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

17. From the evidence on record, it also stands proved that the juniors to the petitioner are still in job. When such is the position, the termination of the services of the petitioner is in violation of the provisions of section 25G & H of the Act. It has been held by our own Hon'ble High Court in case titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

18. Since, on the record, it stands established that juniors to the petitioner, as mentioned above, are still in job, his termination, being in violation of the provisions of section 25 G & H of the Act, is illegal and unjustified and also for want of compliance of section 25F. Consequently, my answer to this issue is in “Yes” accordingly.

Issue No. 2

19. Ld. Counsel for the petitioner has contended with vehemence that the petitioner is entitled for full back wages because his services had been terminated illegally and in unjustified manner. On the other hand, it has been argued on behalf of the respondents that since the petitioner has failed to prove that he is not gainfully employed, he cannot be granted back wages. In support of his such contention, Ld. counsel placed reliance *Latest HLJ 2007 (HP) 306, Pawan Kumar Vs. HP State Industrial Dev. Corporation & Aar* in which it has been held that ***“a workman is not entitle for back wages unless establish that he is not gainfully employed for which purpose, the burden is on him”***. Ld. Counsel has also relied upon *2010 (1) SLJ (SC), 70, M/s Reetu Marbles Vs. Prabhakant Shukla* in which it has been held that ***“Payment of full back wages upon an order of termination, being declared illegal, cannot be granted mechanically”***. It has been further held that ***“It does not automatically follow that reinstatement must be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”***.

20. In the instant case, the petitioner has not led any convincing and reliable evidence that after his disengagement/retranchment, he has not been gainfully employed. Moreover, keeping in view the period for which he had remained engaged and also the legal position, as stated above, I am of the considered view that he (petitioner) is not entitled to be granted back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated, with seniority and continuity in service but without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue No.3

21. An objection has been taken by the respondent that this court has no jurisdiction to try this reference as the respondents Trust is not an Industry but this objection does not hold good in view of the law laid down by the ***Constitutional Bench of Hon'ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa*** in which it has been held that educational institutions and research centres are Industries. It has further been held that a University is an Industry particularly with respect to small workers like Mali, Chowkidars, Carpenters etc. and as such on the strength of this judgment, it can be safely concluded that the respondents are governed by the Act, especially in case of the daily wage workers. Consequently, my answer to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 19.7.2007. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 25th June, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT NAHAN

Ref no. 20 of 2009.
Instituted on 4.4.2009.
Decided on. 25.6.2010.

Husain Singh S/o late Shri Ram Swroop, R/o Village Tal Pura, P.O Palio, Tehsil Nahan, District Sirmour, H.P.

Petitioner.

VS.

1. The Deputy Commissioner, District Sirmour at Nahan-cum-Chairman, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP.
1. The SDM, Nahan, District Sirmour-cum-Administrator, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP.

Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.K Khidta, Advocate.
For respondent: Shri A.K Rewal, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

“Whether termination of the services of Shri Jai Husain Singh S/o late Shri Ram Swroop, by the Chairman-cum-Deputy Commissioner, Sirmour at Nahan Maha Mai Balasundri, Trilokpur Temple, Trust, Tehsil Nahan, District Sirmour and ii) Administrator-cum-SDM Nahan, Maha Mai Baladundri, Trilokpur Temple Trust, Tehsil Nahan District Sirmour, HP without complying the mandatory provisions of the Industrial Disputes Act, 1947 I legal and justified? If not, what relief of service benefits, including seniority, back wages and compensation, the above aggrieved workman is entitled to”.

2. In nutshell, the case of the petitioner is that he was engaged as Mason, by the Temple Trust Committee, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP, on daily wages in the month of May, 2005 and worked as such till 1.7.2007. On 2.7.2007, his services had been orally terminated, by the Temple Administrator, without serving any notice and paying retrenchment compensation, in violation of the Provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act). Initially there was a Temple Committee which, in the year, 1999, was taken over by the Trust, which is headed by its Chairman (Deputy Commissioner). Thus, from the year 2004, the Temple Administration, has been under the Trust and respondent no.1, its Chairman, and respondent no.2, the Administrator. It is further averred that the petitioner had completed 240 days in each calendar year. Moreover, juniors to him namely Ramesh, Prem Singh & Chaman are still working. In this way, he deserves to be reinstated with all the consequential benefits as his services have been terminated in violation of the mandatory provisions of the Act.

3. The claim of the petitioner has been contested on having raised preliminary objections including jurisdiction. On merits, it has been asserted that the petitioner had been engaged as casual worker by the respondents during the construction of their building. Since, new industries were being set up, at Kala Amb, he (petitioner) left the work, on his own, in order to work in the industries, on more wages. It has been denied that the services of the petitioner had been terminated by the respondents. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 28.8.2009.

1. Whether the termination of the services of the petitioner by Chairman-cum-Deputy Commissioner, Maha Mai Balasundri, Temple Trust, Tehsil Nahan & Administrator-cum-SDM, Nahan Maha Mai Balasundri, Temple Trust, Nahan, is illegal and unjustified as alleged?

OPP.....

2. If issue no.1 is proved, to what relief of service benefits including seniority and back wages, the petitioner is entitled to?

OPP.....

3. Whether this court has no jurisdiction to try this reference?

OPR.....

4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent, per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. The stand of the respondent is that the petitioner was a casual labourer and that he had abandoned the work, on his own, in order to work on higher wages in the factories, being set up at Kala Amb. The respondents in support of their defence have examined Shri Naresh Kumar (RW-1), who tendered his affidavit Ex. R-1 in his chief examination. In his affidavit, he has stated that the petitioner had left the Temple Construction work, on his own, in June, 2007. When the Temple started new work, he (petitioner) had been sent a message through him (RW-1), to join the job but of no avail. In the cross examination, he stated that for the last 7 years, he has been working as Mason with the Temple Trust and that the petitioner had also been working alongwith him. He admitted that he (petitioner) had been engaged in the year, 2005. No written order/notice had been sent through him, to the petitioner, to join his duties. He admitted that his version is to this effect, that all the workers (about 100), had been terminated by the trust.

9. In his affidavit, Ex. P/A, the petitioner (PW-1), has supported all the material facts, on oath, including that he had worked for 240 days in each calendar year before his services had been terminated. He has denied that his services had been engaged, subject to the availability of work and that at present, he has been working with private Industries at Kala Amb.

10. According to Shri Harish Sharma (PW-2), Assistant Manager, Accounts, in the Temple Trust, the petitioner had been engaged as beldar in May, 2005 and worked till 1.7.2007, when his services had been disengaged, after the completion of work, without notice and compensation. S/Shri Jagat Singh, Chetan, Sita Ram and others are junior to the petitioner and that they are still working with the respondent. In the cross examination, he admitted that the petitioner had not been given regular appointment and that he had left the job, on his own. He further admitted that the petitioner had not completed 240 days in a calendar year.

11. The petitioner has led positive oral evidence to prove his assertion that he had completed 240 days in the twelve calendar months preceding his termination. Even, from the statement of Shri Harish Sharma (PW-2), it is revealed that he (petitioner) had worked from May, 2005 to 1.7.2007. In the affidavit of Shri Naresh Kumar (RW-1), it has not been stated that the petitioner had not completed 240 days in the twelve preceding months from the date of his termination. Thus, I hold that the petitioner succeeded in proving that he had completed 240 days in the twelve calendar months preceding his termination.

12. From the statement of Shri Harish Sharma (PW-2), it is further borne out that juniors to the petitioner are still working with the respondent-Trust. Although, the contention of the respondent to this effect is that the petitioner had left the job, on his own, in order to work in private factories, on higher wages but there is no reliable and cogent evidence, on record, to prove this assertion, particularly, when the evidence, led by the petitioner, is convincing and reliable. It has been held by our own Hon'ble High Court in *latest HLJ 2007 (HP) 903 State of HP & Others Vs. Bhatag Ram & Another*. that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

13. From the evidence on record, it also stands proved that the juniors to the petitioner are still in job. When such is the situation, the termination of the services of the petitioner is in violation of the provisions of section 25G & H of the Act. It has been held by our own Hon'ble High Court incase titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

14. Since, on the record, it stands established that juniors to the petitioner, as mentioned above, are still in job, his termination, being in violation of the provisions of section 25 G & H of the Act, is illegal and unjustified and also for want of compliance of section 25F. Consequently, my answer to this issue is in “Yes” accordingly.

Issue No.2

15. Since, the petitioner has failed to prove that he has not been gainfully employed after his termination, I, without hesitation, hold that he is not entitled for back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated, with seniority and continuity in service but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue No.3

16. An objection has been taken by the respondent that this court has no jurisdiction to try this reference as the respondents Trust is not an Industry but this objection does not hold good in view of the law laid down by the ***Constitutional Bench of Hon’ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa*** in which it has been held that educational institutions and research centres are Industries. It has further been held that a University is an Industry particularly with respect to small workers like Mali, Chowkidars, Carpenters etc. and as such on the strength of this judgment, it can be safely concluded that the respondents are governed by the Act, especially in case of the daily wage workers. Consequently, my answer to this issue is in “No”.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 1.7.2007 Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 25th June, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT NAHAN.

Ref no. 21 of 2009.
Instituted on 4.4.2009.
Decided on. 25.6.2010.

Jai Pal S/o Shri Muktyar Singh, R/o Village Kandiwala, P.O Verma Papri, Tehsil Nahan, District Sirmour, HP.

Petitioner.

VS.

1. The Deputy Commissioner, District Sirmour at Nahan-cum-Chairman, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP.

2. The SDM, Nahan, District Sirmour-cum-Administrator, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP.

Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.K Khidta, Advocate.

For respondent: Shri A.K Rewal, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

“Whether termination of the services of Shri Jai Pal S/o Shri Muktyar Singh, by the Chairman-cum-Deputy Commissioner, Sirmour at Nahan Maha Mai Balasundri, Trilokpur Temple, Trust, Tehsil Nahan, District Sirmour and ii) Administrator-cum-SDM Nahan, Maha Mai Baladundri, Trilokpur Temple Trust, Tehsil Nahan District Sirmour, HP without complying the mandatory provisions of the Industrial Disputes Act, 1947 I legal and justified? If not, what relief of service benefits, including seniority, back wages and compensation, the above aggrieved workman is entitled to”.

2. In nutshell, the case of the petitioner is that he was engaged as Mason, by the Temple Trust Committee, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP, on daily wages in the month of April, 2002 and worked as such till 6.2.2007. On 7.2.2007, his services were orally terminated, by the Temple Administrator, without serving any notice and paying retrenchment compensation, in violation of the Provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act). Initially there was a Temple Committee which, in the year, 1999, was taken over by the Trust, which is headed by its Chairman (Deputy Commissioner). Thus, from the year 2004, the Temple Administration, has been under the Trust and respondent no.1, its Chairman, and respondent no.2, the Administrator. It is further averred that the petitioner had completed 240 days in each calendar year. Moreover, juniors to him namely Ramesh & Chaman are still working. In this way, he deserves to be reinstated with all the consequential benefits as his services have been terminated in violation of the mandatory provisions of the Act.

3. The claim of the petitioner has been contested on having raised preliminary objections including jurisdiction. On merits, it has been asserted that the petitioner had been engaged as casual worker by the respondents during the construction of their building. Since, new industries were being set up, at Kala Amb, he (petitioner) left the work, on his own, in order to work in the industries, on more wages. It has been denied that the services of the petitioner had been terminated by the respondents. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 28.8.2009.

1. Whether the termination of the services of the petitioner by Chairman-cum-Deputy Commissioner, Maha Mai Balasundri, Temple Trust, Tehsil Nahan & Administrator-cum-SDM, Nahan Maha Mai Balasundri, Temple Trust, Nahan, is illegal and unjustified as alleged?

OPP.....

2. If issue no.1 is proved, to what relief of service benefits including seniority and back wages, the petitioner is entitled to?

OPP.....

3. Whether this court has no jurisdiction to try this reference?

OPR.....

4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent, per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. Ld. Counsel for the petitioner has submitted that in order to defeat the provisions of the Act, so that the petitioner may not complete 240 days, fictional breaks were being given. He further urged that since the petitioner had remained in work for such a long period, it clearly goes to show that the work was of continuous/permanent nature. He also submitted that since the services of the petitioner had been disengaged without notice and retrenchment compensation, the same is illegal and unjustified for being in violation of the provisions of the Act. Further, as it stands proved on record that the juniors to the petitioner have been engaged/retained in work, this also goes to show that there have been violation of the provisions of section 25G & H of the Act. Another contention, which has been advanced by the Ld. counsel, is to this effect that since the respondent has not stepped into the witness box, there is no such material, whatsoever, on record, which could go to prove its defence. By merely examining one of the workers namely Shri Naresh Kumar (RW-1), the defence version that the petitioner had left the job, on his own, in order to work in some private firm, is not proved.

9. On the other hand, Ld. Counsel appearing on behalf of the respondent has urged with vehemence that the services of the petitioner had been engaged as a casual worker and that he left the work, on his own. Moreover, now the work stands completed. Thus, when the petitioner, on his own, had left the job and also that the work is complete, it cannot be said that there has been any violation of the provisions of the Act. In support of his contentions, the Ld. Counsel has relied upon **2008 ACJ 1700, Om Prakash Batish Vs. Ranjit and others, Latest HLJ 2006 HP 116, State of HP & others Vs. Presiding Judge & another and Latest HLJ 2006 834, State of HP & Ors. Vs. Bir Singh and another.**

10. Undoubtedly, Ld. Counsel for the respondent, by putting reliance on 2008 ACJ 1700 (supra) has urged that a person, who is employed for a limited period for carrying out repair work in a residential house, is not a workman but this ruling is of no help to the respondent because in the instant case it has not been proved that the services of the petitioner had been engaged for doing a work, which was for short/limited period. On the contrary, it is quite evident that the work, being performed by him (petitioner), was of continuous/permanent nature.

11. The stand of the respondent is that the petitioner was a casual labourer and that he had abandoned the work, on his own, in order to work on higher wages in the factories, being set up at Kala Amb. The respondents in support of their defence have examined Shri Naresh Kumar (RW-1), who tendered his affidavit Ex. R-1 in his chief examination. In his affidavit, he has stated that the petitioner had left the Temple Construction work, on his own, in July, 2004. In Feb. 2007, when the Temple started new work, he (petitioner) had been sent a message through him (RW-1), to join the job but of no avail. In the cross examination, he stated that for the last 7 years, he has been working as Mason with the Temple Trust and that the petitioner had also been working alongwith him. He admitted that he (petitioner) had been engaged in the year, 2002. No written order/notice had been sent through him, to the petitioner, to join his duties. He admitted that his version is to this effect, that all the workers (about 100), had been terminated by the trust.

12. From the evidence, which has been led by the respondents, it has not been proved that the petitioner had abandoned the job, on his own. I may mention that the respondents have neither taken any steps to produce any documentary evidence that the petitioner has been employed in private unit at Kala Amb nor examined any person from that unit in support thereof. In these circumstances, the case law relied upon by the respondent (supra), has no applicability in the present case. It is also to be noted that the Ld. Counsel for the petitioner has rightly argued that since, the respondents have neither examined the Chairman or the Administrator of the respondents Trust, its defence that the petitioner had abandoned the job, on his own, is also not proved.

13. In his affidavit, Ex. P/A, the petitioner (PW-1), has supported all the material facts, on oath, including that he had worked for 240 days in each calendar year before his services had been terminated. He has denied that his services had been engaged, subject to the availability of work and that at present, he has been working with private Industries at Kala Amb.

14. According to Shri Harish Sharma (PW-2), Assistant Manager, Accounts, in the Temple Trust, the petitioner had been engaged as beldar in April, 2004 and worked till 6.2.2007, when his services had been disengaged, after the completion of work, without notice and compensation. S/Shri Jagat Singh, Chetan, Sita Ram and others are junior to the petitioner and that they are still working with the respondent. In the cross examination, he admitted that the petitioner had not been given regular appointment and that he had left the job, on his own. He further admitted that the petitioner had not completed 240 days in a calendar year.

15. The petitioner has led positive oral evidence to prove his assertion that he had completed 240 days in the twelve calendar months preceding his termination. Even, from the statement of Shri Harish Sharma (PW-2), it is revealed that he (petitioner) had worked from April, 2004 to 6.2.2007. In the affidavit of Shri Naresh Kumar (RW-1), it has not been stated that the petitioner had not completed 240 days in the twelve preceding months from the date of his termination. Thus, I hold that the petitioner has succeeded in proving that he had completed 240 days in the twelve calendar months preceding his termination.

16. From the statement of Shri Harish Sharma (PW-2), it is further borne out that juniors to the petitioner are still working with the respondent-Trust. Although, the contention of the respondent is to this effect that the petitioner had left the job, on his own, in order to work in private factories, on higher wages but there is no reliable and cogent evidence, on record, to prove this assertion, particularly, when the evidence, led by the petitioner, is convincing and reliable. It has been held by our own Hon'ble High Court in **latest HLJ 2007 (HP) 903 State of HP & Others Vs. Bhatag Ram & Another**. that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

17. From the evidence on record, it also stands proved that the juniors to the petitioner are still in job. When such is the position, the termination of the services of the petitioner is in violation of the provisions of section 25G & H of the Act. It has been held by our own Hon'ble High Court in case titled as **State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903**. that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

18. Since, on the record, it stands established that juniors to the petitioner, as mentioned above, are still in job, his termination, being in violation of the provisions of section 25 G & H of the Act, is illegal and unjustified and also for want of compliance of section 25F. Consequently, my answer to this issue is in “Yes” accordingly.

Issue No.2

19. Ld. Counsel for the petitioner has contended with vehemence that the petitioner is entitled for full back wages because his services had been terminated illegally and in unjustified manner. On the other hand, it has been argued on behalf of the respondents that since the petitioner has failed to prove that

he is not gainfully employed, he cannot be granted back wages. In support of his such contention, Ld. counsel placed **reliance Latest HLJ 2007 (HP) 306, Pawan Kumar Vs. HP State Industrial Dev. Corporation & Aar** in which it has been held that *“a workman is not entitle for back wages unless establish that he is not gainfully employed for which purpose, the burden is on him”*. Ld. Counsel has also relied upon **2010 (1) SLJ (SC), 70, M/s Reetu Marbles Vs. Prabhakant Shukla** in which it has been held that *“Payment of full back wages upon an order of termination, being declared illegal, cannot be granted mechanically”*. It has been further held that *“It does not automatically follow that reinstatement must be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”*.

20. In the instant case, the petitioner has not led any convincing and reliable evidence that after his disengagement/retrenchment, he has not been gainfully employed. Moreover, keeping in view the period for which he had remained engaged and also the legal position, as stated above, I am of the considered view that he (petitioner) is not entitled to be granted back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated, with seniority and continuity in service but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue No.3

21. An objection has been taken by the respondent that this court has no jurisdiction to try this reference as the respondents Trust is not an Industry but this objection does not hold good in view of the law laid down by the **Constitutional Bench of Hon'ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa** in which it has been held that educational institutions and research centres are Industries. It has further been held that a University is an Industry particularly with respect to small workers like Mali, Chowkidars, Carpenters etc. and as such on the strength of this judgment, it can be safely concluded that the respondents are governed by the Act, especially in case of the daily wage workers. Consequently, my answer to this issue is in “No”.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 7.2.2007. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 25th June, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT NAHAN.

Ref no. 22 of 2009.
Instituted on 4.4.2009.
Decided on. 25.6.2010.

Surinder Singh S/o Shri Prithi Singh, R/o Village Kandiwala, P.O Verma Papri, Tehsil Nahan,
District Sirmour, HP.

Petitioner.

VS.

1. The Deputy Commissioner, District Sirmour at Nahan-cum-Chairman, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP.
2. The SDM, Nahan, District Sirmour-cum-Administrator, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP.

Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.K Khidta, Advocate.

For respondent: Shri A.K Rewal, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

“Whether termination of the services of Shri Surinder Singh S/o Shri Prithi Singh, by the Chairman-cum-Deputy Commissioner, Sirmour at Nahan Maha Mai Balasundri, Trilokpur Temple, Trust, Tehsil Nahan, District Sirmour and ii) Administrator-cum-SDM Nahan, Maha Mai Baladundri, Trilokpur Temple Trust, Tehsil Nahan District Sirmour, HP without complying the mandatory provisions of the Industrial Disputes Act, 1947 I legal and justified? If not, what relief of service benefits, including seniority, back wages and compensation, the above aggrieved workman is entitled to”.

2. In nutshell, the case of the petitioner is that he was engaged as chowkidar, by the Temple Trust Committee, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP, on daily wages in the month of November, 2004 and worked as such till 2.8.2007. On 3.8.2007, his services were orally terminated, by the Temple Administrator, without serving any notice and paying retrenchment compensation, in violation of the Provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act). Initially there was a Temple Committee which, in the year, 1999, was taken over by the Trust, which is headed by its Chairman (Deputy Commissioner). Thus, from the year 2004, the Temple Administration, has been under the Trust and respondent no.1, its Chairman, and respondent no.2, the Administrator. It is further averred that the petitioner had completed 240 days in each calendar year. Moreover, juniors to him namely Jagat Singh & Chetan are still working. In this way, he deserves to be reinstated with all the consequential benefits as his services have been terminated in violation of the mandatory provisions of the Act.

3. The claim of the petitioner has been contested on having raised preliminary objections including jurisdiction. On merits, it has been asserted that the petitioner had been engaged as casual worker by the respondents during the construction of their building. Since, new industries were being set up, at Kala Amb, he (petitioner) left the work, on his own, in order to work in the industries, on more wages. It has been denied that the services of the petitioner had been terminated by the respondents. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 28.8.2009.

1. Whether the termination of the services of the petitioner by Chairman-cum-Deputy Commissioner, Maha Mai Balasundri, Temple Trust, Tehsil Nahan & Administrator-cum-SDM, Nahan Maha Mai Balasundri, Temple Trust, Nahan, is illegal and unjustified as alleged?

OPP.....

2. If issue no.1 is proved, to what relief of service benefits including seniority and back wages, the petitioner is entitled to?

OPP.....

3. Whether this court has no jurisdiction to try this reference?

OPR.....

4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent, per operative part of award.

REASONS FOR FINDINGS

Issue No.1

8. Ld. Counsel for the petitioner has submitted that in order to defeat the provisions of the Act, so that the petitioner may not complete 240 days, fictional breaks were being given. He further urged that since the petitioner had remained in work for such a long period, it clearly goes to show that the work was of continuous/permanent nature. He also submitted that since the services of the petitioner had been disengaged without notice and retrenchment compensation, the same is illegal and unjustified for being in violation of the provisions of the Act. Further, as it stands proved on record that the juniors to the petitioner have been engaged/retained in work, this also goes to show that there have been violation of the provisions of section 25G & H of the Act. Another contention, which has been advanced by the Ld. counsel, is to this effect that since the respondent has not stepped into the witness box, there is no such material, whatsoever, on record, which could go to prove its defence. By merely examining one of the workers namely Shri Hans Raj (RW-1), the defence version that the petitioner had left the job, on his own, in order to work in some private firm, is not proved.

9. On the other hand, Ld. Counsel appearing on behalf of the respondent has urged with vehemence that the services of the petitioner had been engaged as a casual worker and that he left the work, on his own. Moreover, now the work stands completed. Thus, when the petitioner, on his own, had left the job and also that the work is complete, it cannot be said that there has been any violation of the provisions of the Act. In support of his contentions, the Ld. Counsel has relied upon **2008 ACJ 1700, Om Prakash Batish Vs. Ranjit and others, Latest HLJ 2006 HP 116, State of HP & others Vs. Presiding Judge & another and Latest HLJ 2006 834, State of HP & Ors. Vs. Bir Singh and another.**

10. Undoubtedly, Ld. Counsel for the respondent, by putting reliance on 2008 ACJ 1700 (supra) has urged that a person, who is employed for a limited period for carrying out repair work in a residential house, is not a workman but this ruling is of no help to the respondent because in the instant case it has not been proved that the services of the petitioner had been engaged for doing a work, which was for short/limited period. On the contrary, it is quite evident that the work, being performed by him (petitioner), was of continuous/permanent nature.

11. The stand of the respondent is that the petitioner was a casual labourer and that he had abandoned the work, on his own, in order to work on higher wages in the factories, being set up at Kala Amb. The respondents in support of their defence have examined Shri Hans Raj (RW-1), who tendered his affidavit Ex. R-1 in his chief examination. In his affidavit, he has stated that the petitioner had left the Temple Construction work, on his own, in July, 2004 as he was employed by a private unit, Varun Industries near Kheri Pool, Kala Amb as security worker. On 8.10.2007, when the Temple started new work, he (petitioner) had been sent a message through him (RW-1), to join the job but of no avail. In the cross

examination, he stated that for the last 6/7 years, he has been working as Mason with the Temple Trust and that the petitioner had also been working alongwith him. He admitted that he (petitioner) had been engaged in the year, 2004. No written order/notice had been sent through him, to the petitioner, to join his duties. He admitted that his version is to this effect, that all the workers (about 100), had been terminated by the trust.

12. From the evidence, which has been led by the respondents, it has not been proved that the petitioner had abandoned the job, on his own. I may mention that the respondents have neither taken any steps to produce any ocumentary evidence that the petitioner has been employed in private unit at Kala Amb nor examined any person from that unit in support thereof. In these circumstances, the case law relied upon by the respondent (supra), has no applicability in the present case. It is also to be noted that the Ld. Counsel for the petitioner has rightly argued that since, the respondents have neither examined the Chairman or the Administrator of the respondents Trust, its defence that the petitioner had abandoned the job, on his own, is also not proved.

13. In his affidavit, Ex. P/A, the petitioner (PW-1), has supported all the material facts, on oath, including that he had worked for 240 days in each calendar year before his services had been terminated. He has denied that his services had been engaged, subject to the availability of work and that at present, he has been working with Kothari Industries at Kala Amb.

14. According to Shri Harish Sharma (PW-2), Assistant Manager, Accounts, in the Temple Trust, the petitioner had been engaged as beldar in March, 1995 and worked till 1.4.2004, when his services had been disengaged, after the completion of work, without notice and compensation. S/Shri Jagat Singh, Chetan, Sita Ram and others are junior to the petitioner and that they are still working with the respondent. In the cross examination, he admitted that the petitioner had not been given regular appointment and that he had left the job, on his own. He further admitted that the petitioner had not completed 240 days in a calendar year.

15. The petitioner has led positive oral evidence to prove his assertion that he had completed 240 days in the twelve calendar months preceding his termination. Even, from the statement of Shri Harish Sharma (PW-2), it is revealed that he (petitioner) had worked from March, 1995 to 2004. In the affidavit of Shri Hans Raj (RW-1), it has not been stated that the petitioner had not completed 240 days in the twelve preceding months from the date of his termination. Thus, I hold that the petitioner has succeeded in proving that he had completed 240 days in the twelve calendar months preceding his termination.

16. From the statement of Shri Harish Sharma (PW-2), it is further borne out that juniors to the petitioner are still working with the respondent-Trust. Although, the contention of the respondent is to this effect that the petitioner had left the job, on his own, in order to work in private factories, on higher wages but there is no reliable and cogent evidence, on record, to prove this assertion, particularly, when the evidence, led by the petitioner, is convincing and reliable. It has been held by our own Hon'ble High Court in *latest HLJ 2007 (HP) 903 State of HP & Others Vs. Bhatag Ram & Another*. that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

17. From the evidence on record, it also stands proved that the juniors to the petitioner are still in job. When such is the position, the termination of the services of the petitioner is in violation of the provisions of section 25G & H of the Act. It has been held by our own Hon'ble High Court incase titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

18. Since, on the record, it stands established that juniors to the petitioner, as mentioned above, are still in job, his termination, being in violation of the provisions of section 25 G & H of the Act, is illegal and unjustified and also for want of compliance of section 25F. Consequently, my answer to this issue is in “Yes” accordingly.

Issue No.2

19. Ld. Counsel for the petitioner has contended with vehemence that the petitioner is entitled for full back wages because his services had been terminated illegally and in unjustified manner. On the other hand, it has been argued on behalf of the respondents that since the petitioner has failed to prove that he is not gainfully employed, he cannot be granted back wages. In support of his such contention, Ld. counsel placed reliance *Latest HLJ 2007 (HP) 306, Pawan Kumar Vs. HP State Industrial Dev. Corporation & Aar* in which it has been held that “*a workman is not entitle for back wages unless establish that he is not gainfully employed for which purpose, the burden is on him*”. Ld. Counsel has also relied upon *2010 (1) SLJ (SC), 70, M/s Reetu Marbles Vs. Prabhakant Shukla* in which it has been held that “*Payment of full back wages upon an order of termination, being declared illegal, cannot be granted mechanically*”. It has been further held that “*It does not automatically follow that reinstatement must be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry*”.

20. In the instant case, the petitioner has not led any convincing and reliable evidence that after his disengagement/retrenchment, he has not been gainfully employed. Moreover, keeping in view the period for which he had remained engaged and also the legal position, as stated above, I am of the considered view that he (petitioner) is not entitled to be granted back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated, with seniority and continuity in service but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue No.3.

21. An objection has been taken by the respondent that this court has no jurisdiction to try this reference as the respondents Trust is not an Industry but this objection does not hold good in view of the law laid down by the *Constitutional Bench of Hon'ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa* in which it has been held that educational institutions and research centres are Industries. It has further been held that a University is an Industry particularly with respect to small workers like Mali, Chowkidars, Carpenters etc. and as such on the strength of this judgment, it can be safely concluded that the respondents are governed by the Act, especially in case of the daily wage workers. Consequently, my answer to this issue is in “No”.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 3.8.2007. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 25th June, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT NAHAN

Ref no. 23 of 2009.
Instituted on 4.4.2009.
Decided on. 25.6.2010.

Mohan Lal S/o Jagdish Chand, R/o Village Lehi, P.O Verma Papri, Tehsil Nahan, District Sirmour,
HP.

Petitioner.

VS.

1. The Deputy Commissioner, District Sirmour at Nahan-cum-Chairman, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP.
2. The SDM, Nahan, District Sirmour-cum-Administrator, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP.

. Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.K Khidta, Advocate.

For respondent: Shri A.K Rewal, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:

“Whether termination of the services of Shri Mohan Lal S/o Shri Jagdish Chand, by the Chairman-cum-Deputy Commissioner, Sirmour at Nahan Maha Mai Balasundri, Trilokpur Temple, Trust, Tehsil Nahan, District Sirmour and ii) Administrator-cum-SDM Nahan, Maha Mai Baladundri, Trilokpur Temple Trust, Tehsil Nahan District Sirmour, HP without complying the mandatory provisions of the Industrial Disputes Act, 1947 Illegal and justified? If not, what relief of service benefits, including seniority, back wages and compensation, the above aggrieved workman is entitled to”.

2. In nutshell, the case of the petitioner is that he was engaged as Mason, by the Temple Trust Committee, Maha Mai Balasundri, Trilokpur, Temple Trust, Tehsil Nahan, District Sirmour, HP, on daily wages in the month of March, 1995 and worked as such till 1.7.2007. On 2.7.2007, his services were orally terminated, by the Temple Administrator, without serving any notice and paying retrenchment compensation, in violation of the Provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act). Initially there was a Temple Committee which, in the year, 1999, was taken over by the Trust, which is headed by its Chairman (Deputy Commissioner). Thus, from the year 2004, the Temple Administration, has been under the Trust and respondent no.1, its Chairman, and respondent no.2, the Administrator. It is further averred that the petitioner had completed 240 days in each calendar year. Moreover, juniors to him namely S/Shri Ramesh, Chetan, Jagat Singh, Prem Singh & others are still working. In this way, he deserves to be reinstated with all the consequential benefits as his services have been terminated in violation of the mandatory provisions of the Act.

3. The claim of the petitioner has been contested on having raised preliminary objections including jurisdiction. On merits, it has been asserted that the petitioner had been engaged as casual worker by the respondents during the construction of their building. Since, new industries were being set up, at Kala Amb, he (petitioner) left the work, on his own, in order to work in the industries, on more wages. It has been denied that the services of the petitioner had been terminated by the respondents. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 28.8.2009.

1. Whether the termination of the services of the petitioner by Chairman-cum-Deputy Commissioner, Maha Mai Balasundri, Temple Trust, Tehsil Nahan & Administrator-cum-SDM, Nahan Maha Mai Balasundri, Temple Trust, Nahan, is illegal and unjustified as alleged?

. .OPP.

2. If issue no.1 is proved, to what relief of service benefits including seniority and back wages, the petitioner is entitled to?

. .OPP.

3. Whether this court has no jurisdiction to try this reference?

. .OPR.

4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1	Yes.
Issue No.2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1

8. Ld. Counsel for the petitioner has submitted that in order to defeat the provisions of the Act, so that the petitioner may not complete 240 days, fictional breaks were being given. He further urged that since the petitioner had remained in work for such a long period, it clearly goes to show that the work was of continuous/permanent nature. He also submitted that since the services of the petitioner had been disengaged without notice and retrenchment compensation, the same is illegal and unjustified for being in violation of the provisions of the Act. Further, as it stands proved on record that the juniors to the petitioner have been engaged/retained in work, this also goes to show that there have been violation of the provisions of section 25G & H of the Act. Another contention, which has been advanced by the Ld. counsel is to this effect that since the respondent has not stepped into the witness box, there is no such material, whatsoever, on record, which could go to prove its defence. By merely examining one of the workers namely Shri Karam Chand (RW-1), the defence version that the petitioner had left the job, on his own, in order to work in some private firm, is not proved.

9. On the other hand, Ld. Counsel appearing on behalf of the respondent has urged with vehemence that the services of the petitioner had been engaged as a casual worker and that he left the work, on his own. Moreover, now the work stands completed. Thus, when the petitioner, on his own, had left the job and also that the work is complete, it cannot be said that there has been any violation of the provisions of the Act. In support of his contentions, the Ld. Counsel has relied upon **2008 ACJ 1700, Om Prakash Batish Vs. Ranjit and others, Latest HLJ 2006 HP 116, State of HP & others Vs. Presiding Judge & another and Latest HLJ 2006 834, State of HP & Ors. Vs. Bir Singh and another.**

10. Undoubtedly, Ld. Counsel for the respondent, by putting reliance on 2008 ACJ 1700 (supra) has urged that a person, who is employed for a limited period for carrying out repair work in a residential house, is not a workman but this ruling is of no help to the respondent because in the instant case it has not been proved that the services of the petitioner had been engaged for doing a work, which was for short/limited period. On the contrary, it is quite evident that the work, being performed by him (petitioner), was of continuous/permanent nature.

11. The stand of the respondent is that the petitioner was a casual labourer and that he had abandoned the work, on his own, in order to work on higher wages in the factories, being set up at Kala Amb. The respondents in support of their defence have examined Shri Karam Chand (RW-1), who tendered his affidavit Ex. R-1 in his chief examination. In his affidavit, he has stated that the petitioner had left the Temple Construction work, on his own as he was employed by a private unit, M/s Pritam Electricals Pvt. Ltd. at Kala Amb. When the Temple started new work, he (petitioner) had been sent a message through him (RW-1), to join the job but of no avail. In the cross examination, he stated that for the last 7 years, he has been working as Mason with the Temple Trust and that the petitioner had also been working alongwith him.

He admitted that he (petitioner) had been engaged in the year, 1995. No written order/notice had been sent through him, to the petitioner, to join his duties. He admitted that his version is to this effect, that all the workers (about 100), had been terminated by the trust.

12. From the evidence, which has been led by the respondents, it has not been proved that the petitioner had abandoned the job, on his own. I may mention that the respondents have neither taken any steps to produce any documentary evidence that the petitioner has been employed in private unit at Kala Amb nor examined any person from that unit in support thereof. In these circumstances, the case law relied upon by the respondent (supra), has no applicability in the present case. It is also to be noted that the Ld. Counsel for the petitioner has rightly argued that since, the respondents have neither examined the Chairman or the Administrator of the respondents Trust, its defence that the petitioner had abandoned the job, on his own, is also not proved.

13. In his affidavit, Ex. P/A, the petitioner (PW-1), has supported all the material facts, on oath, including that he had worked for 240 days in each calendar year before his services had been terminated. He has denied that his services had been engaged, subject to the availability of work and that at present, he has been working with private Industries at Kala Amb.

14. According to Shri Harish Sharma (PW-2), Assistant Manager, Accounts, in the Temple Trust, the petitioner had been engaged as beldar in March, 1995 and worked till 1.7.2007, when his services had been disengaged, after the completion of work, without notice and compensation. S/Shri Jagat Singh, Chetan, Sita Ram and others are junior to the petitioner and that they are still working with the respondent. In the cross examination, he admitted that the petitioner had not been given regular appointment and that he had left the job, on his own. He further admitted that the petitioner had not completed 240 days in a calendar year.

15. The petitioner has led positive oral evidence to prove his assertion that he had completed 240 days in the twelve calendar months preceding his termination. Even, from the statement of Shri Harish Sharma (PW-2), it is revealed that he (petitioner) had worked from March, 1995 to 1.7.2007. In the affidavit of Shri Karam Chand (RW-1), it has not been stated that the petitioner had not completed 240 days in the twelve preceding months from the date of his termination. Thus, I hold that the petitioner has succeeded in proving that he had completed 240 days in the twelve calendar months preceding his termination.

16. From the statement of Shri Harish Sharma (PW-2), it is further borne out that juniors to the petitioner are still working with the respondent-Trust. Although, the contention of the respondent is to this effect that the petitioner had left the job, on his own, in order to work in private factories, on higher wages but there is no reliable and cogent evidence, on record, to prove this assertion, particularly, when the evidence, led by the petitioner, is convincing and reliable. It has been held by our own Hon'ble High Court in latest **HLJ 2007 (HP) 903 State of HP & Others Vs. Bhatag Ram & Another**. that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

17. From the evidence on record, it also stands proved that the juniors to the petitioner are still in job. When such is the position, the termination of the services of the petitioner is in violation of the provisions of section 25G & H of the Act. It has been held by our own Hon'ble High Court in case titled as **State of HP & Others Vs Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903**. that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

18. Since, on the record, it stands established that juniors to the petitioner, as mentioned above, are still in job, his termination, being in violation of the provisions of section 25 G & H of the Act, is illegal and unjustified and also for want of compliance of section 25F. Consequently, my answer to this issue is in “Yes” accordingly.

Issue No. 2

19. Ld. Counsel for the petitioner has contended with vehemence that the petitioner is entitled for full back wages because his services had been terminated illegally and in unjustified manner. On the other hand, it has been argued on behalf of the respondents that since the petitioner has failed to prove that he is not gainfully employed, he cannot be granted back wages. In support of his such contention, Ld. counsel placed reliance *Latest HLJ 2007 (HP) 306, Pawan Kumar Vs. HP State Industrial Dev. Corporation & Aar* in which it has been held that “*a workman is not entitle for back wages unless establish that he is not gainfully employed for which purpose, the burden is on him*”. Ld. Counsel has also relied upon *2010 (1) SLJ (SC), 70, M/s Reetu Marbles Vs. Prabhakant Shukla* in which it has been held that “*Payment of full back wages upon an order of termination, being declared illegal, cannot be granted mechanically*”. It has been further held that “*It does not automatically follow that reinstatement must be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry*”.

20. In the instant case, the petitioner has not led any convincing and reliable evidence that after his disengagement/retranchment, he has not been gainfully employed. Moreover, keeping inview the period for which he had remained engaged and also the legal position, as stated above, I am of the considered view that he (petitioner) is not entitled to be granted back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated, with seniority and continuity in service but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue No. 3.

21. An objection has been taken by the respondent that this court has no jurisdiction to try this reference as the respondents Trust is not an Industry but this objection does not hold good in view of the law laid down by the *Constitutional Bench of Hon'ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa* in which it has been held that educational institutions and research centres are Industries. It has further been held that a University is an Industry particularly with respect to small workers like Mali, Chowkidars, Carpenters etc. and as such on the strength of this judgment, it can be safely concluded that the respondents are governed by the Act, especially in case of the daily wage workers. Consequently, my answer to this issue is in “No”.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 2.7.2007 Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 25th June, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.
Camp at Nahan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no. 32 of 2001. Instituted on 5.3.2001.
Decided on. 15.6.2010.

General Secretary/Pradhan, Employees Union Central Cooperative Consumer, Store Shimla.

. .Petitioner.

VS.

1. The Managing Director, HP State Marketing and Consumer Cooperative Fed. Ltd. Shimla-3.
2. The Liquidator, Cooperative Societies, Himachal Pradesh, Shimla-9.

. Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.L. Sharma, Advocate.
 For respondent No.1 Shri Sandeep Mahajan, Advocate.
 For respondent No.2 None

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the demand raised by the Pradhan/General Secretary, Employees Union, Central Cooperative Consumer Store Shimla with (1) The Managing Director, HP State Marketing and Consumer Cooperative Fe. Ltd. Shimla-3 and (2) Liquidator., Cooperative Consumer Store, C/o Registrar Cooperative Societies, Himachal Pradesh Shimla-9 vide their demand notice dated 30.1.2000 (copy enclosed) for grant of pay scales, annual increment, additional dearness allowances, interim relief and other regular allowances admissible to them w.e.f. 18.6.1994 as a result of any alleged revised pay scales w.e.f. 1996, are genuine and justified? If yes, which of their demands should be accepted and from which date?"

2. In nutshell, the case of the petitioner Union (hereinafter referred Petitioner) is that, it has twenty one members, who were the employees of the Central Cooperative Consumer Store (hereinafter referred consumer store) before, 1994 which was put under liquidation by the Registrar Cooperative Societies (hereinafter referred Registrar) on 8.6.1994. Consequent thereupon, the services of the members of the petitioner were taken over by the HP State Marketing & Consumer Cooperative Fed. Ltd. (hereinafter referred respondent no.1), under an agreement for handling the entire business system which consists of twelve fair price shops, located in the Shimla Town. At the time of taking over, the services of the members of Petitioner, the respondent no.1, had agreed to pay the salary as was being drawn by them. It is alleged that the members of the union were getting salary as per the pay scale, prescribed for the post, from the office of respondent no.2. It is further alleged that the members of the union were getting salary as per the pay scale prescribed for the post including the increments and other admissible allowances, every year, before 1994. However, after, 1994, they had been getting the fixed salary which was being paid to them in the year 1994. In fact, while entering into agreement, respondent no.1 had agreed to pay the salary at the existing pay scale, being drawn by each worker. This clearly shows that the scales, which the members of union were getting in the year, 1994 were to remain continue alongwith annual increments and other admissible allowances, being paid to the similar situated workers, on the permanent roll of respondent no.1. It is further alleged that the members of the petitioner are being deprived of their rightful claim of equal pay which is being given by respondent no.1 to their counterparts. Such difference of wages has been depicted in para 5 of the petition. Even, the Managing Director of respondent no.1 had agreed with the representatives of the petitioner for the release of regular pay scale but till date, nothing has been done. The work, which is being done by the members of the petitioner is same & similar to the work which is being done by other workers, on permanent roll of respondent no.1. It has further been asserted that there is revision of pay scale after, 1994 but the members of the petitioner are being deprived from getting the fruits of the such revision of pay scale. By not allowing the equal wages, the action of the respondents is illegal and arbitrary. Thus, the members of the petitioner deserve to be granted pay scale including the revision in the same alongwith other consequential benefits such as arrears, annual increments, allowances etc. w.e.f. 18.6.1994, with interest.

3. Respondent No.1 has contested the claim of the petitioner on having raised preliminary objections including maintainability and that the claim petition has not been properly verified in accordance

with law. On merits, it has been asserted that on 8.6.1994, the consumer Store was ordered to be liquidated and thereafter, respondent no.2 had entered into an agreement with the replying respondent on, 18.6.1994 as per which, the replying respondent had agreed to utilize the twelve shops, only for the management purpose alongwith eighteen workers i.e ten salesman and eight helpers. It has been denied that twenty one members of the petitioner had been benefited as per the said agreement dated 18.6.1994. As far as the eighteen workers, aforesaid, are concerned, they are governed by the agreement dated 18.6.1994, entered into between replying respondent and respondent no.2. It is further maintained that the petitioner has not brought, to the notice of the Court, the spirit of the agreement. Further, in case, the plea of the petitioner is allowed to be accepted, at its face value, then the purpose of the agreement dated 18.6.1994, loses its sincerity. If any such interpretation is made that will jeopardize the rights of the replying respondent. Since, the members of the petitioner derive their rights from the agreement dated 18.6.1994, they cannot not exercise any other claim, which is contrary to the same. It has been specifically denied that the Managing Director of respondent no.1, had agreed with the representatives of the petitioner regarding release of regular pay scales. The interest of the members of the petitioner are not being discriminated. Other allegations denied.

4. No reply was filed by respondent No.2.

5. By filing rejoinder, the petitioner union has reiterated his own allegations, by denying those of the replying respondent.

6. Pleadings of the parties gave rise to the following issues which were struck on 23.7.2002.

1. Whether the demands raised by the petitioner union through its President/General Secretary with the respondents vide their demand notice dated 3.1.2000 are genuine and justified and if so, which of the demands are liable to be accepted and from which date?

. .OPP.

2. Whether the petition is not maintainable in view of the preliminary objection No.2.

. .OPR.

3. Relief.

7. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 Decided in yes accordingly.

Issue No.2 No.

Relief. Reference answered in favour of the petitioner and against the respondent, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1

9. Learned counsel for the petitioner has submitted that the demand raised by the petitioner union with the respondents vide their demand notice dated 3.1.2000 are genuine and justified and the same should be ordered to be accepted by the respondent. Ld. Counsel further urged that as per agreement, arrived at between the Liquidator and respondent no.1, the services of the members of petitioner were taken over by respondent no.1 and thereafter, salaries were being paid to them by respondent no.1 through the liquidator but the members of the petitioner kept on getting the same salary which they had been getting before the Consumer Store came under liquidation. Since, as per the agreement, respondent no.1 had agreed to pay salaries at the existing pay scale, drawn by each worker, the members of the petitioner were entitled to draw annual increments and other allowances even after the execution of agreement dated 18.6.1994 but they

were denied such benefits. Ld. Counsel further urged that the other workers who are on the permanent roll of respondent no.1, are getting much higher salaries than the members of the petitioner despite the fact that they are also doing the same/identical works. When the other workers of respondent no.1, who are on permanent roll, can be allowed to draw annual increments and other allowances as admissible, the members of the petitioner also deserves to be granted all these benefits, on the principle of equal pay for equal work. My attention has also been drawn towards the proceedings of the meeting (mark-X), held on 28.9.1999, under the Chairmanship of Managing Director, as per which, the respondent management could have considered sympathetically for the release of regular pay scales w.e.f. 1.10.1999 to the Super Bazar Employees, if they had agreed to drop the demand of arrears, on the basis of the said proceedings, Ld. Counsel tried to impress upon that even, the management of respondent No.1, had been contemplating to release regular pay scales to the members of the petitioner provided they had agreed to drop the demands for arrears. Ld. Counsel further urged that the action of the respondents is totally illegal, arbitrary and discriminatory because they are paying the same salary to the members of the petitioner which they had been getting in the year, 1994 by depriving them the benefits of revision of pay scales which took place after, 1994.

10. On the other hand, it has been argued, on behalf of respondent no.1, that the members of the petitioner are being paid the salaries which had been agreed upon between the Liquidator and respondent no.1, as per agreement dated 18.6.1994,. Since, the rights of the members of petitioner, in respect of salary, is governed by agreement dated 18.6.1994, the spirit of the agreement cannot be changed by this Court. Ld. Counsel further contended that the demands raised by the members of petitioner cannot be accepted because they are contrary to the agreement dated 18.6.1994.

11. The statement of Deep Ram (PW-1), is to this effect that when the Super bazaar (Consumer Store) was placed under liquidation in 1994, twenty one persons were taken in the employment of respondent No.1 as salesman & helpers. Since, then they have been working as employees of respondent no.1. At present, their number is eighteen because others have since retired. They are being paid salaries as fixed in the year 1994. Allowances, as admissible to their counterparts on the permanent roll of respondent no.1 and also that which they were entitled to receive during the course of their employment with Super Bazar prior to its liquidation in the year, 1994, are not been paid to them. The salesman/helpers, who are on the permanent roll of respondent no.1, are getting regular scales alongwith allowances, fixed by the government, from time to time. The members of the petitioner are being denied equal pay for equal work, for which they are legally entitled. In the cross examination, he denied that the demands raised by petitioner (union), are neither genuine nor justified.

12. Shri Sanjeev Sharma (PW-2), has stated from the record, brought by him, that the salesman employed by the respondent no.1 (Federation), who are on its rolls, are being given regular scales and that they are paid a total monthly gross salary of Rs. 9,673/- and Rs. 7,899/-, as per salary statement for the month of December, 2004, which is Ex. PW-2/A whereas S/Shri Joginder Lal, O.P Thakur & Deep Ram are getting gross salary of Rs. 2,424/- Rs. 3,183 and Rs. 2,604 respectively during the month of July, 1996. W.e.f. June, 2001, the members of petitioner have been allowed a consolidate increase of Rs. 1,000/- each. The duties, being performed by the members of the petitioner and salesmen of the respondent no.1 (Federation) are the same. In the cross examination, he admitted that the members of the petitioner are the employees of liquidator and that they are not entitled to the equal salary which is being drawn by their counterparts for the reason that they are not the employees of the respondent no.1 (Federation).

13. Shri Mehar Chand (PW-3), had been working as sale supervisor in the Super Bazar since, 6.6.1966 to 28.4.1994 and used to get the salary, on the State government pattern. The employees of the Super bazaar are entitled to all service benefits as other regular employees of the State Government. At the time of liquidation, his services had not been transferred.

14. According to Shri Ramesh Bhaik (RW-1), the salary to all the employees of Naya Bazar is being paid by Liquidator. As per settlement, Ex. RX, dated 18.6.1994, the members of the petitioner are not entitled to the revised pay scales as they are not the employees of respondent No.1. In the cross examination, he admitted that the members of the petitioner are not getting the revised pay scales, alongwith increments, as well as other benefits. The fair price shops which were earlier working under Super Bazar, are now working under the control of Himfed (respondent no.1), as per agreement. The Himfed is also

running its own shops, separately. He further admitted that to their own employees, posted in the shops, salaries are being paid as per scales. The shops are being run for public distribution system including daily need items and their work is of permanent nature.

15. From the evidence, which has been referred to above, it is abundantly clear that the workers, who are on the permanent roll of respondent no.1, are being paid the salaries and other allowances as per their scales but the members of the petitioner are being paid the salaries as they used to get in the year, 1994. Ld. Counsel for the respondent has urged that since, the members of the petitioner are not the employees of respondent no.1, for this reason, they are not entitled to be paid salaries as per scales. In fact, they are the employees of the Liquidator and thus, there is no liability of respondent no.1 to pay them salaries and other allowances as per scales including the benefits on account of revision of pay scales. In my view, this contention of the Ld. Counsel cannot be accepted because as per the agreement dated 18.6.1994, which had been entered into between the Liquidator and respondent no.1, there was nothing such that the members of the petitioner were not to be granted scales as well as annual increments and other admissible allowances. This agreement dated 18.6.1994, goes to show that the workers, who were employed for running the twelve shops, were to remain on the roll of Liquidator and that the Himfed (respondent no.1) was to make payment of their salaries, through the Liquidator, in the pay scale being drawn by each worker. This para does not go to show that the Himfed (respondent no.1), had not taken the liability to pay salaries to the members of the petitioner in the scales which were to revise in future. There is also not such in this para which could go to show that the members of petitioner were not entitled to draw their annual increments and other admissible allowances with the passage of time in future. It is true that as per Ex. RX, the members of the petitioner had remained on the roll of the Liquidator but it was the liability of respondent no.1 (Himfed) to pay them the salaries. In the statement of Deep Ram (PW-1), it has come that the members of the petitioner are being paid salary as fixed in the year, 1994 and that they are not being paid any allowances as admissible to their counterparts in the Himfed (respondent no.1). He further made it clear that such allowances were being received by them during the course of their employment in the Super Bazar, prior to liquidation (in the year 1994). Shri Ramesh Bhaik (RW-1), has made it clear that Himfed (respondent no.1) is also running its own shops and to its employees, the salaries are being paid as per scales. From the statement of Sanjeev Sharma, (PW-2), it is borne out that the gross salary of the employees, who are on the permanent roll of respondent no.1, are much higher than the salaries being paid to the members of the petitioner. The evidence, on record, further goes to show that the members of the petitioner are also doing the same work as being carried out by the permanent employees, on the roll of respondent no.1. It has been rightly argued by the Ld. Counsel for the petitioner that the members of the petitioner deserves to be granted equal pay for equal work.

16. It has been specifically alleged by the petitioner that after 1994, there had been revision of pay scales and that the members of the petitioner are being deprived of the fruits of such revision. In my considered view, the members of petitioner are entitled to draw their salaries alongwith increments and other admissible allowance w.e.f. 18.6.1994, the date on which the agreement was entered into between the Liquidator and respondent no.1, and also for the revisions in the pay scale which took place after, 1994. I disagree with the Ld. Counsel for respondent no.1, that in case, the members of the petitioner are allowed pay scales and other admissible benefits, the spirit of the agreement will stand changed. I may reiterate that there is nothing such, in the agreement Ex. RX, that the members of the petitioner were not be paid salaries as per their scales and that they were not entitled to draw increments as well as other admissible allowances including revision of pay scales. On the record, the petitioner has brought demand notice dated 30.1.2000. Its para no.9 goes to show that in meeting, which had been held under the Chairmanship of managing Director, Himfed, on 28.9.1999, it had been agreed that incase the employees working in PDS did not press for arrears for new pay scale, the management of Himfed was ready to pay new scale w.e.f. 1.10.1999. The employees of PDS shops, working under Himfed also agreed not to press for arrears but despite this, the management of Himfed intentionally and deliberately did not implement its decision. From the contents of this para, it is highlighted that the petitioner had agreed to receive new pay scales w.e.f. 1.10.1999 without demanding arrears. In my considered view, the members of the petitioner can be granted new pay scale w.e.f. 1.10.1999 which they had agreed to through their union. In this way, for my above discussion as well as observation recorded therein coupled with the fact that the members of the petitioner through their union had agreed to get new pay scale w.e.f. 1.10.1999, I hold that the demand raised by the petitioner through its demand notice dated 30.1.2000 qua implementation of new pay scale w.e.f. 1.10.1999 without pressing for arrears is genuine and justified. Consequently, my answer to this issue is in "Yes" accordingly.

17. It is not understandable as to why this petition is not maintainable, particularly, when it has been filed in pursuance to the reference, made to this Court, by the Labour Commissioner. Apart from it, the learned counsel for the contesting respondent could not explain as to why this petition is not maintainable. Accordingly by holding it to be maintainable, my to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim petition is allowed. Resultantly it is ordered that the members of the petitioner be granted new pay scales w.e.f. 1.10.1999 at par with the employees of respondent no.1, who are on its permanent roll, alongwith all admissible benefits. Consequently, the reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 15th June, 2010 in the presence of parties counsels.

By order,
A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA

Ref No. 32 of 2008.
Instituted on 30.6.2008.
Decided on. 16.6.2010.

Chander Sen Negi S/o Shri Namigal Chhawang, R/o Village & P.O Labrang, Tehsil Pooh, District Kinnour, HP.
.Petitioner.

VS.

The Executive Engineer, HPPWD, Division, Kalpa, District Kinnour, HP.

.Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Shashi Shirshoo, Advocate.
For respondent: Ms. Sheetal Bansal, Ld. ADA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Chander Sen Negi S/o Shri Namigal Chhawang by the Executive Engineer, HPPWD, division Kalpa, District Kinnour, HP w.e.f. 01.07.1999 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what amount of back wages, seniority, designation, service benefits and relief the above workman is entitled to?"

2. Briefly, the case of the petitioner is that he had been engaged as daily waged Supervisor/Mate w.e.f. 1.1.1969 on muster roll basis with the respondent and continuously worked till March, 1995, when his services were terminated w.e.f April, 1995 without following the provisions of Industrial disputes Act, 1947 (hereinafter referred Act). When he was not reengaged despite repeated verbal

requests, he filed an OA no. 2021/98 before the Administrative Tribunal, whereby, his services had been reengaged, consequent upon the passing of interim order w.e.f. October, 1998 and he continued, as such, till June, 1999. It also appear that the petitioner had filed another OA, before the Administrative Tribunal, which stood disposed of as withdrawn with the liberty to file afresh. It is alleged that before having been disengaged w.e.f. 1.7.1999, the petitioner had completed 240 days in each calendar year. As far as tribal areas are concerned, a workman is supposed to work for 180 days in a calendar year. It is further asserted that junior to him, have been engaged by the respondent after retrenching his (petitioner's) services and their names are S/Shri Sita Ram Hari Singh & Amar Singh etc. Since, his services had been terminated, without notice and compensation, in violation of the provisions of section 25F of the Act and also that juniors to him are still in job, he deserves to be reinstated with all the consequential benefits.

3. The claim of the petitioner has been contested on the plea that, initially, the petitioner had been engaged as beldar on muster roll basis w.e.f. Jan. 1969 but it has been denied that he had continuously worked till March, 1995. In fact, he had remained wilful absent, as per detail given in reply to para no. 1, of the petition. It is further asserted that lastly, w.e.f. April, 1995, he (petitioner) abandoned the job. The OA no. 493/96, which had been filed by the petitioner, was dismissed on 18.6.1996, being time barred. However, the Tribunal had observed that the petitioner may be considered for fresh appointment and in compliance thereof, he applied for reengagement on 10.3.1998 and had been reengaged as afresh w.e.f. May, 1998 as Mate and continued as such till 1999, when he again left the job, on his own. The OA no. 2021/98 had been withdrawn by the petitioner. It has further been specifically, asserted that the petitioner had been reengaged as fresh w.e.f. May, 1998 as per the observations of the State Tribunal, made in order dated 18.6.1996 in OA no. 493/1996. The petitioner had also remained elected President of Gram Panchayat, Labran, during the period, 1990 to 1995. It has been denied that alleged juniors to the petitioner have been regularized. Only Amar Singh, has been regularized keeping in view his continuous service for ten years. Further, the petitioner has mentioned his age wrongly and that he has already completed 60 years of age. It has been denied that he had completed 240 days in a calendar year. It is further asserted that the petitioner had got himself registered as „D” Class contractor vide letter no. KNR-E Registration/95-939-89 dated 9.5.1996 and that his registration was valid upto 31.3.1998. Other allegations denied.

4. No rejoinder filed. Pleading of the parties gave arise to the following issues which were struck on 29.12.2009.

1. Whether the termination of services of the petitioner by the respondent w.e.f. 1.7.1999, without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged ?

. .OPP.

2. If issue no.1 is proved, to what amount of back wages, seniority, designation, service benefits and relief, the petitioner is entitled to?

.OPP.

3. Relief.

5. I have heard the learned counsels for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1 Yes.

Issue No.2 Entitled to reinstatement as Mate, with seniority and continuity, in service but without back wages.

Relief. Reference answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issue No. 1

7. It is not a disputed fact that the petitioner had been initially engaged as beldar on muster roll basis in the year, 1969. The petitioner (PW-1), has also admitted that he had remained Pradhan of Gram Panchyat, Labran, from 1990 to 1995. The reference, which has been made to this Court, is regarding the legality/justification of the termination of the services of the petitioner w.e.f. 1.3.1999. The past conduct of the petitioner goes to show that he had remained wilful absent during the periods as detailed in reply to para no.1 of the petition. It is also not a disputed fact that the petitioner had filed an OA before the State Tribunal. Ex. RE, is the attested copy of order dated 18.6.996 of the State Tribunal as per which, the application of the petitioner had been dismissed for being time barred. The State Tribunal had made observation, in the order, which reads as under:

“Before parting with the case we may observe that as per the scheme the respondents are keeping the seniority list of all the incumbents who have rendered service under them. Now, it is for the applicant to apply to the respondents for his reinstatement and the latter has to consider the applicant’s case for fresh appointment in case of his past seniority, he is entitled to reengagement. However, keeping his long service in view we except that the respondents shall remedy the grievance of the applicant at the earliest.

The application stands disposed of in terms of above”.

8. It has been pleaded by the respondent that on 10.3.1998, the petitioner had applied for reengagement and that w.e.f. May, 1998, he was engaged as afresh, in pursuance of the order dated 18.6.1996, passed by the State Tribunal, in OA no. 493/96. This clearly goes to show that, on account of the past conduct of the petitioner, as well as the passing of the order by the State Tribunal, his past services and seniority stood lost. Thus, he cannot get any benefit, on the basis of his past services.

9. In the statement of the petitioner (PW-1), it has come that he was reengaged in May, 1998, as afresh, and continued as such till June, 1999. Preceding his termination, he had completed 240 days. W.e.f. 1.7.1999, he had been removed from service, without notice and payment of compensation. From the statement of petitioner, it is abundantly clear that, his services had been engaged in the month of May, 1998. From the said month, his services have to be considered, to have been engaged as afresh, in terms of the observations, made by State Tribunal in its order dated 18.6.1996, passed in OA no. 493/1996, attested copy of which is Ex. RE. Ex. RA is the year wise detail of mandays chart of the petitioner. Ex. RB, is the month wise working days. Ex. RC, is the detail of engagement of daily wages of the petitioner under B&R Division, Kalpa. From this document, it is highlighted that the petitioner had completed 170 ½ days from 1/99 to 6/99. This document further goes to show that the petitioner had completed 29 ½ days in the month of December, 1998, 30 days in the month of November, 1998, 31 days in October 1998, 30 days in Sept., 1998, 29 days in August, 1998 and 28 ½ days in July, 1998. Thus, it stands proved, by documentary evidence, that preceding twelve calendar months from the date of his termination, the petitioner had completed 240 days. At this sage, I may mention that as per the notification of the HP government, in District Kinnaur, the worker is required to complete 180 days for being in continuous service, within the meaning of section 25B of the Act. However, in the instant case, from the statement of the petitioner (PW-1), coupled with the documentary evidence, as referred to above, it stands duly proved that he had even completed more than 240 days in twelve months preceding the date of his termination.

10. The defence version is that the petitioner had abandoned the job, on his own, w.e.f. 1.7.1999. This fact has been supported by Shri Basu Dev Sharma (RW-1), I may observe that from the statement of RW-1, it is not proved that the petitioner had abandoned the job w.e.f. 1.7.1999 for the reason that he has no where stated that any notice had been issued to the petitioner to resume his job. It was obligatory upon the respondent to have issued a notice to the petitioner for resuming the work. In the absence of such proof, the plea of the respondent that the petitioner had left the job, on his own, is not proved, particularly when it has been stated by the petitioner that he was removed from service w.e.f. 1.7.1999.

11. The respondent has also led evidence to this effect that the petitioner remained Pradhan of Gram Panchyat Labran w.e.f. 1990 to 1995 and that his date of birth is not correct. In this regard, I may observe that the reference, which has been made to this court, is not in this regard as to whether the petitioner had remained as Pradhan from 1990 to 1995 and also that whether his age is wrong/incorrect. Had there been any such reference, the defence version in this regard, could have been looked into by this court. Moreover, it has been admitted by the petitioner (PW-1) that he had remained Pradhan of gram Panchyat, Labran. In the absence of such reference, this court is not required to go into this question, as to whether the age of the petitioner is wrong or right. Only it is to be seen as to whether the services of the petitioner w.e.f. 1.7.1999 were terminated, without notice and payment of compensation and that the petitioner had completed 240 days, prior to his termination. As already observed, the petitioner has proved this fact that he had completed 240 days in the twelve calendar months preceding his termination and also that without notice and payment of compensation, he was removed from service w.e.f. 1.7.1999. Thus, his termination is held to be improper and unjustified for want of compliance of the provisions of section 25F of the Act.

12. It has been stated by Shri Basu Dev (RW-1), that w.e.f. May, 1998, the petitioner had been engaged, as afresh, as Mate. In order to see whether juniors to the petitioner are in service, this court has to see that any worker has been engaged by the respondent after May, 1998 because in this month, the services of the petitioner had been engaged afresh. The perusal of Ex. PB shows that Ama Singh was appointed as Motor Mate, in the month of July, 1997. The petitioner has failed to lead evidence in order to show that S/Shri Sita Ram, Hari Singh, Amar Singh, are junior to him especially when he has lost his previous seniority. In this way, for the failure of the petitioner to have proved this fact, I hold that his termination is not in violation of the provisions of section 25G & H of the Act. In view of my above discussion, my answer to this issue is in **“Yes” accordingly.**

Issue No. 2.

13. Before his (petitioner) termination, the petitioner had remained in job with the respondent for a short period of about one year. In this way, by giving due regard to this fact and also other circumstances, particularly, that the petitioner has failed to prove that he has not been gainfully employed after his termination, I, without hesitation, hold that he is not entitled for back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated, with seniority and continuity in service, without back wages. Thus, my answer to this issue is in **“Yes” accordingly.**

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e. 1.7.1999. It is to be made clear that since, the petitioner had been reengaged in May, 1998 as afresh, consequent upon the order of the State Tribunal, his seniority and continuity in service will be counted from May, 1998. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 16th June, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT NALAGARH

Ref no. 37 of 2007.
Instituted on 21.4.2007.
Decided on. 18.6.2010.

Mohd. Tahir S/o Shri Naseerudin C/o Shir Satish Kumar, Branch Secretary, HP AITUC, Head Quarter Near S.B.O.P., Baddi, District Solan, HP.

. .Petitioner.

VS.

The Managing Director M/s Saluja Exim Limited, Plot no. 90, Industrial Area Baddi, District Solan.

. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.
For respondent: Shri Rajeev Sharma, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Mohd. Tahir S/o Shri Naseerudin workman by the Managing Director M/s Saluja Exim Ltd. Plotn o.90, Industrial Area Baddi, District Solan, HP w.e.f. 18.7.2004 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the above workman is legal and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workmen is entitled to?"

2. Briefly, the case of the petitioner is that he was appointed as Pressman, in the month of May, 2002 by the respondent company and continued as such till 18.7.2004, when he was illegally removed from service, without any cogent reason or justification. Even, for the month of July, 2004, he was not paid his earned wages. His last drawn salary was approximately Rs. 4,500/- per month. It is further averred that he had completed 240 days in each calendar year and also in the twelve calendar months preceding his termination. Apart from this, his juniors have been retained in service. Since, his services were terminated in violation of the provisions of Industrial Disputes Act, 1947 (hereinafter referred Act), he deserves to be reinstated in service with all the consequential benefits.

3. Petition has been contested on having raised various preliminary objections including maintainability and that the petitioner has not come before this court, with clean hands. On merits, it has been asserted that, on his own, w.e.f. July, 2004, the petitioner left his job. Moreover, he does not fall in the category of worker as he used to work some-times inside the factory premises as well as outside, as per his sweet will, on piece rate. Apart from this, there was a simple contract between the parties, as per which, the petitioner was required to iron the shirts as much as he could have done and the respondent company was to make the payments, accordingly. He had also received full & final settlement, at the time of abandoning the services. It has been denied that he had completed 240 days. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues, which were struck on 12.11.2008.

1. Whether the termination of services of Mohd. Tahir workman by the Managing Director M/s Saluja Exim Ltd. Baddi District Solan, HP w.e.f. 18.7.2004 without

complying with the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged?

..OPP.

2. If issue no.1 is proved, to what service benefits and amount of compensation, the aggrieved workman is entitled to?

..OPP.

3. Whether the claim is not maintainable in the present form?

..OPR.

4. Whether the petitioner does not fall under the category of workman as alleged?

..OPR.

5. Whether the petitioner is gainfully employed? If so, its effect?

..OPR.

6. Relief.

7. Before I proceed further, it is worthwhile to point out that the evidence of the petitioner was closed by the order of this Court dated 18.6.2010, for the detailed reasons, narrated therein including that despite having been afforded six opportunities, he had either failed to examine himself or to lead his evidence.

8. I have heard the learned counsels for the parties and have also gone through the record of the case carefully.

9. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1	No.
Issue No.2	Becomes redundant.
Issue No.3	No.
Issue No.4	No.
Issue No.5.	No accordingly.
Relief.	Reference answered in favour of the respondent and against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1.

10. It has been alleged by the petitioner that preceding twelve calendar months from the date of his alleged termination i.e. 18.7.2004, he had completed 240 days. In support of his such assertion, neither any documentary evidence has been brought, on record, nor the petitioner has examined himself. In order to get the benefit of section 25F of the Act, it was obligatory upon the petitioner to have proved that he had completed 240 days in twelve calendar months preceding his termination. Another plea, which has been taken by the petitioner, is that his juniors have been retained by the respondent. To prove this fact, there is also no evidence. Consequently, for the failure of the petitioner to have led evidence to prove that, before his termination, he had completed 240 days and also that juniors to him are still in service and further that his services had been terminated by the respondent on 18.7.2004, in contravention of the provisions of the Act, I have no hesitation in holding that he has failed to prove this issue to which my answer is in "No".

Issue No. 2.

11. In view of my findings, on issue no.1, above, this issue becomes redundant.

Issue No.3

12. Consequent upon the reference, which has been made to this Court, the petitioner has filed statement of claim. It is not understandable as to why the claim of the petitioner is not maintainable in the present form. Moreover, at the time of arguments, it could not been explained on behalf of the respondent, as to why, the claim of the petitioner is not maintainable. Thus, by holding it to be maintainable, my answer to this issue is in "No".

Issue No. 4

13. Admittedly, the services of the petitioner had been engaged by the respondent. However, there is a dispute between the parties regarding the month and year, in which his services were so engaged. Whereas the contention of the petitioner is to this effect that his services had been engaged in the month of May, 2002, as per the respondent, he was engaged in the month of March, 2003. Since, he (petitioner) had been engaged by the respondent to do Iron work, definitely, he falls under the category of workman as per section 2 (s) of the Act. Consequently, I hold that the respondent has failed to prove that the petitioner does not fall under the category of workman and my answer to this issue is in "No".

Issue No. 5

14. When regard is given to the reply, filed by the respondent, it is abundantly clear that there is no such plea, having been taken, that the petitioner is gainfully employed. I may mention that initial onus was upon the petitioner to have proved that he has not been gainfully employed, after his termination. In these circumstances, for want of evidence, I hold that the respondent has not discharged its onus to establish that the petitioner is gainfully employed. Thus, this issue is decided in "No" accordingly.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against the petitioner and in favour of respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 18th June, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla
Camp at Nalagarh.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref no. 46 of 2007
Instituted on 4.7.2007.
Decided on. 15.6.2010.

Devi Ram S/o late Shri Ramdhan, Verma Village Jandar, P.O Basantpur, Tehsil Sunni, District Shimla, HP.

. .Petitioner.

VS.

The Divisional Forest Officer, Wild Life Division Shimla, HP.

.Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.R Sharma, Advocate.
For respondent: Ms. Sheetal Bansal, Ld. ADA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of Shri Devi Ram S/o Shri Ramdhan Verma workman by the Divisional Forest Officer, Wild Life, division, Shimla, HP w.e.f. 1.4.2000 without complying the provisions of the Industrial disputes Act, 1947 is proper and justified? If not, what relief of service benefits and the amount of compensation, the above aggrieved workman is entitled to?"

2. Briefly, the case of the petitioner is that, he had initially engaged as daily wage beldar in the month of November, 1997 and he worked under respondent no.3 upto 31.3.2000, when his services had been terminated without any reason. In each calendar year, he had completed 240 days. It is further asserted that junior to him namely Ishwar Dass & Bhagat Ram, have been retained in service. Against his illegal termination, he had filed an OA no. 1805/2000, which later on stood dismissed for want of jurisdiction on 9.8.2004. Since, his services had been terminated in violation of the provisions of the section 25F, 25G & H of the Industrial disputes Act, 1947 (hereinafter referred Act), he deserves to be reinstated in service with all the consequential benefits.

3. The claim has been contested on having raised preliminary objections qua maintainability. On merits, it has been pleaded that the petitioner had been engaged as casual labourer as per the need of work w.e.f. November, 1997 in Foreign Aided Project, called NORAD, which was sponsored by Norway government, against muster roll. The said project was for a period of five years, commencing from 1.4.1995 to 1999, the period of which was further extended up to 2000-01 (21.3.2000). After the completion of the project, the services of all the workmen stood terminated automatically. It has been denied that juniors to the petitioner have been retained in job. As far as Ishwar Dutt & Bhagat Ram are concerned, they are senior to the petitioner and their services had been reengaged as per the order of State Tribunal & Hon'ble High Court. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. The pleading of the parties, gave rise to the following issues, which were struck on 6.12.2007.

1. Whether the services of the petitioner have been illegally terminated by the respondent w.e.f. 21.7.2001 without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect?

..OPP.

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to?

..OPP.

3. Whether the petition is not maintainable in the present form as per the provisions of ID Act? If so, its effect?

..OPR.

4. Whether the forest department is not an industry? If so, its effect?

..OPR.

5. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	No
Issue no.2	become redundant.
Issue no.3	No.
Issue no.4	No.
Relief.	Reference answered against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue no. 1

8. In the statement of the petitioner (PW-1), he admits on having been engaged in NORAD Project, which was Foreign Aided and that his services stood dis-engaged on the completion of the Project alongwith other workmen. He further admitted that the project came to an end and that S/Shri Ishwar Dutt & Bhagat Ram had been reengaged on the orders of State Tribunal and Hon'ble High Court.

9. The evidence to Daljit Singh Dhaulta (RW-1), is to this effect that the petitioner had been engaged as casual labourer, in NORAD Project, which came to an end on 31.3.2000. Due to closer of work, the services of the petitioner stood automatically dispensed with, alongwith other casual labourers. S/Shri Ishwar Dutt and Bhagat Ram are senior to the petitioner and that they had been reengaged on the orders of State Tribunal as well as Hon'ble High Court. Ex. RA is the copy of annual plan.

10. Although, it has been stated by the petitioner (PW-1) that his services had been terminated without notice and payment of compensation but from the record, it is highlighted that his services had been engaged as casual labourer in NORAD Project which came to an end on 31.3.2000, with the closer of the work. It is true that the petitioner has stated to have completed 240 days in the twelve calendar months preceding his termination but since, the aforesaid project came to an end on 31.3.2000, after the closer of the work, it cannot be said that his services had been terminated in violation of the provisions of section 25F of the Act. It has been held by *Hon'ble Supreme Court in State of HP, through the Secretary (Rural Development) to the Government of Himachal Pradesh, Shimla Vs. Ashwani Kumar & others, 1996 (2) SLJ 294* that :

“When a project is closed, due to non availability of funds, the employees engaged on the project are not entitled to regularization”.

11. In the instant case, the services of the petitioner stood dispensed with automatically with he closer of the project. The petitioner (PW-1) has admitted that his services had been, in NORAD Project, taken over by Forest Department which was foreign aided and that on its completion, his services stood disengaged, alongwith, other workmen. It, clearly goes to show that, from very beginning, it has been in his knowledge/notice that his services would remain engaged till the completion of said project and not thereafter. Thus, I have no hesitation in holding that when the services of the petitioner stood disengaged, on the completion of the project, the same cannot be said to be illegal and improper for want of the compliance of the provisions of section 25F of the Act.

12. From, the statement of Shri Daljit Singh Dhaulta (RW-1), it also stands proved that S/Shri Ishwar Dutt & Dharam Singh, are senior to the petitioner and they had been reengaged on the order of the Sate Tribunal and Hon'ble High Court. Thus, there is no violation of the provisions of section 25G & H of the Act. Accordingly, my answer to his issue is in “No”.

Issue no. 2.

13. In view of my findings, on issue no.1, above, this issue becomes redundant.

Issue no. 3.

14. The reference, which has been made to this Court, is required to be answered. For the respondent, it could not be shown that as to why this petition is not maintainable in the present form. Accordingly, by holding it to be maintainable, my answer to this issue is in "No".

Issue no. 4

15. An objection has been taken by the respondent that the forest department is not an industry but this objection does not hold good in view of the law laid down by the **Constitutional Bench of Hon'ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa** in which it has been held that educational institutions and research centres are Industries. It has further been held that a University is an Industry particularly with respect to small workers like Mali, Chowkidars, Carpenters etc. and as such on the strength of this judgment, it can be safely concluded that the respondent department is an Industry and governed by the Act, 1947 especially in case of the daily wage workers. Consequently, my answer to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against the petitioner and in favour of respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 15th June, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT NAHAN

Ref no. 46 of 2009.
Instituted on 8.7.2009.
Decided on. 24.6.2010.

Jai Singh S/o Shri Anoop Singh R/o Village Chassi, P.O surla, Tehsil Nahan, District Sirmour, HP.
. .Petitioner.

VS.

The Superintending Engineer, I&PH Circle, Nahan, District Sirmour, HP.
. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.K Khidta, Vice Shri A.K Gupta, Advocate.
For respondent: Shri Sanjay Pandit, Ld. ADA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Jai Singh S/o Shri Anoop Singh workman by the superintending Engineer, I&PH Circle, Nahan, District Sirmour, HP w.e.f. 1.1.1998 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?"

2. In nutshell, the case of the petitioner is that he was engaged as daily wage workman under the IPH Circle, Nahan in Solan Division w.e.f. Feb. 1997 to September, 1997. Thereafter, his services were taken in Nahan division w.e.f. Sep. 1997 to December, 1997. It is alleged that when in the month of December, 1997, his services were disengaged without complying with the mandatory provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred Act), he had already completed 240 days. In fact, no notice or compensation had been paid to him before retrenching his services. Apart from this, persons junior to him are still serving as well as others, who had been engaged alongwith him. It is also alleged that fresh engagements had been made after his services were disengaged in utter violation of the provisions of section 25G of the Act.

3. The claim of the petitioner has been contested on having raised preliminary objections qua maintainability and limitation. On merits, it has been asserted that the petitioner had been engaged as daily wage beldar under IPH Division, Solan (respondent no.4) w.e.f. Feb., 1997, where he worked as such upto 30.9.1997. Without informing respondent no.4, he had abandoned the job on his own. It has been denied that after September, 1997, his services had been taken in Nahan Division. In fact, in the month of November, 1997, he was engaged as daily wage beldar by respondent no.3 (the Executive Engineer, IPH Division, Nahan) and continued as such till December, 1997 under IPH Sub Division, Jamta. Thereafter, he abandoned the job without informing respondent no.3. It has further been pleaded that when the petitioner had abandoned the job, in IPH Division, Solan and IPH Division, Nahan, muster rolls had been issued for the same works and same strength but he did not resume his duties. In case, his services had been disengaged, muster rolls were not to be issued. It has been denied that junior persons to the petitioner have been engaged. Some persons had to be reengaged as per the court orders besides some others, on compassionate ground, by the approval of the government. It has been admitted that the persons who had been engaged with the petitioner, under respondent no.4, are still working because they had not left the job. In these circumstances, when the petitioner had himself abandoned the job, no question arises regarding violating the provisions of the Act.

4. Petitioner did not file rejoinder. The pleadings of the parties gave rise to the following issues which were struck on 24.2.2010.

1. Whether the termination of services of the petitioner by the S.E. IPH Circle w.e.f. 1.1.1998 without complying the provisions of ID Act, 1947 is illegal and unjustified as alleged?
..OPP.
2. If issue no.1 is proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to?
..OPP.
3. Whether the petition is not maintainable?
..OPR.
4. Whether the petition is barred by limitation?
..OPR.
5. Relief.

5. I have heard the learned counsels for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1	No.
Issue No.2	Becomes redundant.
Issue No.3	No.
Issue No.4	No.
Relief.	Reference answered in favour of the respondent and against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1

7. Ld. Counsel for the petitioner has submitted that, since, the petitioner had worked in two separate divisions i.e. Solan & Nahan within the same Circle i.e. IPH Nahan, his services are required to be counted while calculating 240 days. If, the working days of the petitioner, in the aforesaid two divisions, are counted, it is quite evident, on record, that he had worked for more than 240 days preceding the date/month when his services were disengaged. Ld. Counsel further urged that no notice had been issued to the petitioner by the respondents for resuming his duties. Besides, juniors to the petitioner are still in job and on this score, the retrenchment of the petitioner is illegal for being in violation of the provisions of the Act, particularly, sections 25G & H.

8. On the other hand, Ld. Deputy DA appearing on behalf of the respondents has urged with vehemence that the services of the petitioner in two separate sub divisions cannot be counted in calculating 240 days. He further submitted that there is no question of calculating 240 days when it stands duly proved, on record, that the petitioner had abandoned his job at both places i.e. Kandaghat in Solan District and Jamta in Nahan/Sirmour District. Ld. Deputy DA further invited my attention towards the muster rolls which had been issued for the periods when the petitioner had left the job, on his own. No junior to the petitioner had been engaged. Some persons had to be reengaged on the orders of the Court and also on compassionate grounds but that does not mean that there had been violation of the provisions of the Act particularly, when the petitioner had abandoned the job.

9. The statement of petitioner (PW-1,) is to this effect that he had been engaged as daily wage beldar from Feb. 1997 and continued as such till December, 1997 when his services were terminated without any notice and paying compensation. From Feb. 1997 to December, 1997, he had completed 277 days. S/Shri Sher Singh & Arvind Jaswal, who are junior to him, were engaged in March, 1997. Shri Arjun Singh was engaged as beldar on May, 2001. He was not called when new beldars were engaged. He had not abandoned the job. In the cross examination, he admitted that in Feb. 1997, he had been engaged in Kandaghat with respondent no.4 and worked till 30.9.1997. He denied to have left the job, on his own and without informing the department. To respondent no.4, he had not made any representation in writing. He denied that his services had not been taken over by Nahan Division. From 30.11.1997 to 31.12.1997, he had worked with Jamta Sub Division of District Sirmour. He denied that he again left the job, on his own but admitted to have not made any representation, in writing, to respondent no.3. He expressed his ignorance that muster rolls for the same works and same strength were being issued when he left the job. He admitted that Sher Singh and Arvind Jaswal were also working when he was doing his job/work and that he has not produced any document/record that they are junior to him.

10. According to Shri Vinod Sharma (RW-1), the petitioner was engaged as daily wage beldar in the month of Feb., 1997 at IPH Sub Division, Kandaghat where he worked as such upto 30.9.1997. Thereafter, he (Petitioner) abandoned the job and did not work. No representation was made to the department. In Sub division Kandaghat, he had worked only for 223 days as is evident from Ex. RA. For the months of October to December, 1997 muster rolls had been issued, which are Ex. RA, Ex. RA-2 and Ex. RA-3 but the petitioner did not turn up for work. In the cross examination, he stated that he (petitioner) had not been issued any notice to resume the work but explained that he (petitioner) was aware of the issuance of the muster roll for the months of October to December.

11. The version of Shri Santosh Thakur (RW-2), is to this effect that the petitioner was engaged on daily wage basis in his Sub division, Jamta w.e.f. 1.11.1997 to 31.12.1997 when he, on his own, left the job without any information. His services had not been terminated. Even for the months of Jan., 1998 to

March, 1998, muster rolls had been issued, which are Ex. RA-5, Ex. RA-6 & Ex. RA-7, for the same works and strength of workers. No junior to the petitioner had been engaged, except on the orders of the Court. The list of such juniors is Ex. RA-8. Sher Singh and Arvind Jaswal (beldars) had been engaged in Jamta sub division w.e.f. 2.3.1997 and 10.7.1997 respectively which falls under IPH Division, Nahan. At that time, the petitioner was working under IPH Division, Solan. Arjun Singh, beldar was reengaged by the orders of the Court w.e.f. 14.5.2005. In the cross examination, he stated that the Sub divisions where the petitioner had remained engaged, fall under the same circle and that if the working days of both the Sub divisions are counted, then the same come to 277 days. No notice had been issued to the petitioner to resume his job. Except the muster rolls, he has not other proof that the petitioner had abandoned the job. Regarding issuance of muster rolls, no information had been sent to the petitioner.

12. Firstly, it is to be ascertained as to whether the petitioner had completed 240 days in the twelve calendar months preceding his alleged termination. The Ld. Counsel for the petitioner submits that since, the petitioner had worked in two Sub divisions under the same circle i.e. IPH Circle, Nahan, District, Sirmour, the same are required to be counted and their number comes to 277 days. This contention of Ld. Counsel for petitioner has been seriously countered by Ld. Deputy DA by urging that the same cannot be done because the petitioner had worked under two Sub divisions i.e. at Kandaghat in District Solan and Jamta in District Sirmour.

13. From the material on record, there remains no dispute that initially, the petitioner had been engaged as daily wage beldar under respondent no.4 w.e.f. Feb. 1997 to 30th September, 1997 and remained posted as such in Sub Division, Kandaghat where he worked for 223 days. Thereafter, he was engaged as daily wage beldar by respondent no.3 and remained posted as such w.e.f. 1.10.1998 to 31.12.1997 in Sub Division, Jamta where he worked for 54 days as is evident from Ex. RA-4.

14. It has been held by the *Hon'ble Apex Court in 2007 (2) SLJ 1277 case titled Haryana Urban Development Authority Vs. Om Pal* that "where a workman worked in two sub divisions which constituted two different establishments having different cadre strength of workman, the service rendered by him in both the divisions cannot be counted for the purpose of section 25F of the Act". It was further held that "because there was one controlling authority, the same by its, would not mean that the establishment was not separate". Para 5 & 6 are relevant and produced as under:-

"1. The Industrial Tribunal-cum-labour Court unfortunately did not go into the said question at all. If both the establishments are treated to be one establishment, for the purpose of reckoning continuity of service within the meaning of section 25B of the Act as held by the Tribunal, a person working at different point of time in different establishments of the statutory authority, would be entitled to claim reinstatement on the basis thereof. However, in that event, one establishment even may not know that the workman had worked in another establishment. In absence of such a knowledge, the authority retrenching the workman concerned would not be able to comply with the statutory provisions contained in section 25F of the Act. Thus, once two establishments are held to be separate and distinct having different cadre strength of the workman, if any, we are of the opinion that the period during which the workman was working in one establishment would not enure to his benefit when he was recruited separately in another establishment, particularly, when he was not transferred from one sub division to the other. In this case, he was appointed merely on daily wages".

2. In Union of India and other Vs. Jummasa Diwan (2006)8 SCC 544, this court opined:

"There are several establishments of the Railway Administration. If a workman voluntarily gives up his job in one of the establishments and joins another, the same would not amount to his being in continuous service. When a casual employee is employed in different establishments, maybe under the same employer, e.g., the Railway Administration of India as a whole, having different administrative set up, different requirements and different projects, the concept of continuous service cannot be applied and it cannot be said that even in such a situation he would be entitled to a

higher status being in continuous service. It is not in dispute that the establishment of Appellant No. 3 herein had started a project. His recruitment in the said establishment would, therefore, constitute a fresh employment. In a case of this nature, Respondent would not be entitled to his seniority. If the project came to a close, the requirements of Section 25-N of the Act were not required to be complied with". In 2005 (1) 314 SC case titled DGM Oil & Natural Gas Corporation Ltd & Another Vs. Ilias Abdulrehman Hon'ble supreme Court has held that "Number of days of work put in by the workman in broken periods, cannot be taken as a continuous employment for the purpose of section 25F of Industrial Disputes Act".

15. In the instant case, the Ld, Counsel for the petitioner has sought to get counted the working days pertaining by the petitioner in two separate Sub divisions as mentioned above i.e. Kandaghat & Jamta on the plea that they fall under the same Circle but his such contention cannot be accepted in view of the law laid down by the Hon'ble Supreme Court, under ruling supra. The Hon'ble Supreme Court has made it clear that even if there is one controlling authority, the same by itself, would not mean that the establishment is not separate. On the contrary, It has been rightly contended by the Ld. Deputy DA that for counting 240 days, the services rendered by the petitioner in two separate Sub divisions cannot be counted. As already observed, in sub division Kandaghat, the petitioner has worked for 223 days and in sub division, Jamta, for 54 days. When the petitioner fails to prove that he had worked for 240 days in twelve preceding months from the date of his alleged termination, the provisions of section 25F are not applicable especially when the petitioner has failed to prove that his services from Solan Division had been taken over by Nahan Division. The absence of any such proof, goes to show that his services had been engaged afresh in Nahan Division.

16. Although the plea of the petitioner is that his services had been retrenched/disengaged by the respondents but the defence version is to this effect that he had abandoned the job, on his own. At Kandaghat, the petitioner had worked from Feb., 1997 to 30.9.1997. It has been specifically stated by Shri Vinod Sharma (RW-1) that after 30.9.1997, the petitioner had abandoned the job and never represented to the department and further that for the months of October to December, 1997, muster rolls had been issued for the same works and same strength vide Ex. RA-2 & Ex. RA-3. These muster rolls go to show that had the services of the petitioner been retrenched/terminated, there was no occasion for the department to have issued the muster rolls for the same works and strength in favour of the petitioner. Similarly, the evidence of Shri Santosh Thakur (RW-2), goes to show that the petitioner had worked in Jamta sub division w.e.f. 1.11.1997 to 30.12.1997, when he left the job, on his own and did not make any representation. His evidence further goes to show that the muster rolls for the months of Jan. 1998 to March, 1998 as referred to above, had been issued for the same works and strength, in favour of the petitioner.

17. It is true that the petitioner had not been issued any notice to resume the work but since he remained continued to be in the job, there was no need for the respondents to have issued him notice to resume his job/work. At this stage, I would like to make it clear that the petitioner has failed to prove that his services had been terminated by the respondents while he was in job either at Sub division Kandaghat or Jamta. In case, he could have proved this fact regarding having been terminated, then it was required of the respondents, to have sent him notice for resuming the job. The defence version that petitioner had abandoned his job further gets support from this fact that when the petitioner failed to turn up for his job after 30.9.1997 at Sub division, Kandaghat and after 31.12.1997 at Sub division, Jamta, muster rolls were issued for the same works and strength in favour of the petitioner. It has been laid down by our **Hon'ble High Court in Nagar parishad Bilaspur Vs. Bone Ram reported in 2005 (1) Shim. LC 79** that "when the conduct of the workman speaks that he abandoned his job and that his services were not terminated by the employer, such termination caused by workman himself would not fall within the definition of retrenchment".

18. In the instant case, when the respondents had been issuing muster rolls for the same works and strength in favour of the petitioner and further that he failed to make any representation or protest against his alleged termination, his such conduct clearly speaks/shows that he abandoned his job. Already, I have held that the petitioner has failed to prove that he had worked for 240 days in twelve calendar months preceding his alleged termination. Thus, no question of violation of section 25F arises. Another contention of the petitioner is that juniors to him are in service. His such assertion could have carried weight, only if, it had been proved that his services were terminated by the respondents. As already stated above, the petitioner

has failed to prove that either respondent no.3 or respondent no.4 had terminated his services. On the contrary, the respondents have led convincing and reliable evidence to prove that the petitioner himself abandoned the jobs, initially, while working in Sub Division Kandaghat and thereafter in Sub Division Jamta. I am not inclined to accept the contention of the learned counsel for petitioner that since the alleged termination of the services of the petitioner is in violation of the provisions of the Act, for this reason, his services are required to be reengaged with all consequential benefits. Consequently, my answer to this issue is in "No".

Issue No. 2.

19. Since the petitioner has failed to prove issue no.1, this issue becomes redundant.

Issue No.3

20. At the time of arguments, the Ld. Counsel for the respondent could not show as to why this petition is not maintainable. Since, the reference, from the appropriate government was received in this Court for adjudication, the petitioner filed the statement of claim. It is not understandable as to why this petition is not maintainable. Accordingly by holding it to be maintainable, my answer to this issue is in "No".

Issue No. 4

21. In support of this issue, no evidence was led by the respondent being the legal issue. It is well settled that there is no limitation under the I.D Act, 1947 as held by their lordship of ***Hon'ble Supreme Court as reported in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum-processing Service Society Limited and Another. as under:-***

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

In view of the above cited ruling, this petition is held not to be barred by limitation. Accordingly, this issue is answered in negative.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and the same is dismissed. Consequently, the reference stands answered against the petitioner and in favour of respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 24th June, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla
Camp at Nahan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref no. 52 of 2008
Instituted on 8.9.2008.
Decided on. 1.6.2010.

Prem Singh S/o Shri Mohan Lal R/o Village Munder, P.O Kungal Balti, sub Teshil Nankhari, Tehsil Rampur, District Shimla, HP.

. .Petitioner.

VS.

The Divisional Manager, HP State Forest Corporation (Forest Division) Rampur Bushehr, District Shimla, HP.

.Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Balwant Singh, Advocate.
For respondent: Already ex-parte.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Prem Singh S/o Shri Mohan Lal, daily wages Field man w.e.f. 15.1.2005 by the divisional manager, HP State Forest Corporation, Rampur, District Shimla without complying the provisions of section 25 F & G of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits, amount of compensation, back wages and seniority the aggrieved workman is entitled to?"

2. Briefly, the case of the petitioner is that he was initially engaged as daily wage Field man in the year 1989 by the respondent and posted as such at Sub Davison, Nankhari. Till, the year 2003, he continuously worked as such. Thereafter, he was transferred from Forest Division Nankhari, to Forest Division Rampur, in the year, 2003. It is alleged that his service condition had been changed arbitrarily and illegally because he was put on a Truck as conductor, without any notice. In this way, he was being deputed at different places like Nahan, Baddi, Nalagarh, etc. Although, he had requested the Divisional Manager of the Corporation that it was not possible for him to travel with a Truck to such distance places but of no avail. On the contrary, his services were terminated by the order dated 15.1.2005 without compliance to the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred Act). During the period of eighteen years of his service, he had completed 240 days in each calendar year and his service record was unblemished. It is further maintained that after his services were illegally terminated, the respondent retained junior persons namely Subhash Chand, Jagdish Chand and others as per their names as find mention in para no. 10 of the petition. Since, his services had been terminated in violation of the provisions of the Act, he deserves to be reinstated with all consequential benefits.

3. The claim of the petitioner has been resisted on having raised preliminary objections that it is not maintainable. On merits, it has been asserted that the petitioner was engaged on daily wage, as Field man in Nankhari unit for watch & ward duty, on 18.7.1989 and that he remained in service upto 15.1.2005 but during that period, he used to remain absent from duty on regular basis. In this regard, he was being issued notices in respect of his absenteeism, vide annexure A-1 to A-8. On account of his such illegal absenteeism, his services were terminated as per law. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations, by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 8.3.2010.

1. Whether the retrenchment of services of petitioner by the respondent w.e.f. 15.1.2005 without complying with the provisions of section 25F & G of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged?

. .OPP.

2. If issue no.1 is proved, to what relief of service benefits, amount of compensation, back wages and seniority, the petitioner is entitled to?

. .OPP.

3. Relief.

6. Before, I proceed further, it is worthwhile to mention that on 13.5.2020, the respondent was proceeded against ex-parte for the reasons narrated therein.

7. By way of ex-parte evidence, the petitioner has examined himself as PW-1. I have heard the learned counsel for the petitioner and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1 Yes.

Issue No.2 Entitled for reinstatement in service with seniority and continuity but without back wages.

Relief. Reference answered in favour of the petitioner per operative part of award.

REASONS FOR FINDINGS

Issue No. 1

9. Ex. PA is the affidavit of the petitioner (PW-1) wherein he has supported all the material facts on oath. Ex. PB is the mandays chart and Ex. PC is the reply, which had been filed by respondent before the Conciliation Officer.

10. As per the contention of the petitioner, his services had been terminated w.e.f. 15.1.2005. Ex. PB, the mandays chart, goes to show that in the year 2005, the petitioner had not worked for any day. In the year, 2004 he had worked for 129 days from Jan. to May. In the year 2003, he had worked for 224 days. In this year, 2003 i.e., he had not worked for any days in the months of June, July, August and September. In the preceding year from 2002 to 1989, he had worked for more than 240 days in each calendar year except 1989, when he worked for 159 days.

11. In order to take the benefit of section 25F of the Act, the petitioner has to prove that he had worked for 240 days in the twelve calendar months preceding his termination. However, the petitioner succeeds in proving from Ex. PA that he had only worked for 129 days preceding the twelve calendar months from Jan., 2005 (15.1.2005) when his services were terminated (15.1.2005). Since, the petitioner has failed to prove this fact, his termination for want of compliance of section 25F cannot be said to be illegal and unjustified.

12. In the petition, it has been mentioned that S/Shri Subhash Chand, Jagdish Chand, Harbans and Karam Chand who are junior to the petitioner are still in service. In his affidavit, Ex. PA, the petitioner has supported this fact on oath. Since there is no evidence led by the respondent in order to rebut the evidence of the petitioner, it stands proved on record that persons junior to the petitioner are still in service. It is true that the defence version is to this effect that since, the petitioner used to remain absent from duty, off and on, his services were legally terminated w.e.f. 15.1.2005 but no evidence, whatsoever, has been led by the respondent in support of its such plea. Moreover, it is not the defence version that any enquiry had been conducted against the petitioner regarding his such alleged absenteeism. Besides, there is no proof that

annexure A-1 to A-8 had been delivered/served upon the petitioner. It has been held by their lordships of *Hon'ble Supreme Court in 1993 (1) SC Service Law Judgments 222* that:

“Where there is retrenchment on the basis of absence from duty. A reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service.”

Since, on the record, it stands proved that no opportunity of being heard was afforded to the petitioner before retrenching him from service and that his juniors are still in service, there is violation of sections 25G & H of the Act. It has been held by our own Hon'ble High Court incase titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

Accordingly, the termination of the petitioner w.e.f. 15.1.2005 is held to be illegal and unjust. Consequently, my answer to this issue is in “Yes”.

Issue No. 2.

13. In order to claim back wages, it was required of the petitioner to have pleaded and established that after his termination from service, he did not remain gainfully employed. In this way, by giving due regard to above mentioned fact and circumstance, that the petitioner has failed to prove that he did not remain gainfully employed after his termination, I without hesitation hold that he is not entitled for back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated with seniority and continuity in service without back wages. Thus, my answer to this issue is in “Yes” accordingly.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 15.1.2005. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 1st June, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref no. 59 of 2007
Instituted on 30.7.2007.
Decided on. 1.6.2010.

1. Amar Singh S/o Shri Duli Chand R/o Village Rajwai, P.O Rewag, Tehsil Sunni, District Shimla, H.P.
2. Deep Ram S/o Shri Atma Ram R/o Village & P.O Reog, Tehsil Sunni, District Shimla, HP.

3. Chet Ram S/o Shri Agru Ram R/o Village Lunsu, P.O Khera, Tehsil Sunni, District Shimla, H.P.
4. Dharam Dass S/o Shri Barfia Ram R/o Village Padain, P.O Khaira via Basantpur, Tehsil Sunni, District Shimla, HP.
5. Mohinder Lal S/o Shri Sita Ram R/o Village & P.O Bharara, Tehsil Sunni, District Shimla, H.P.

. .Petitioners.

VS.

The Senior Executive Engineer, Electrical Division HPSEB Sunni, Tehsil Sunni, District Shimla, HP.

. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.R Sharma, Advocate.
For respondent: Ms. Sharmila Patial, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of (1) Shri Amar Singh S/o Shri Duli Chand, (2) Shri Deep Ram S/o Shri Atma Ram, (3) Shri Chet Ram S/o Shri Agru Ram, (4) Shri Dharam Dass S/o Shri Barfia Ram and Shri Mohinder Lal S/o Shri Sita Ram workmen by the Senior Executive Engineer, electrical Division, HPSEB Sunni, Tehsil Sunni district Shimla, HP w.e.f. 07.07.2005 and 13.05.2005 without complying the provisions of the Industrial Disputes Act, 1947 whereas junior to them are retained by the employer as alleged by the workmen is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workmen are entitled to?"

2. Consequent upon the receipt of reference in this Court, aforesaid Amar Singh (hereinafter referred petitioner no.1), Deep Ram (petitioner no. 2), Chet Ram (petitioner no.3), Dharam Dass (petitioner no.4) and Mohinder Lal (petitioner no.5), filed separate statement of claims. Thus, by way of this award, the claim petitions which have been filed separately by the petitioners are to be decided.

3. Briefly stated facts, as highlighted from the statement of claims, are to the following effect: It has been alleged by petitioner no.1 that in July, 1997, he was initially appointed as daily wage beldar by the respondent and thereafter, he worked continuously to the utmost satisfaction of his superiors but his services were terminated orally w.e.f. 21.3.1998 without assigning any reason. Since, despite repeated assurance, the respondent failed to reengage his services, he was left with no other alternative but to file an O.A before the Administrative Tribunal, which, by way of order dated 13.5.1999, directed the employers to reengage his services at the same place and vicinity, where he was working prior to his termination, by granting interim stay. Pursuance to the aforesaid order, he continued to work and completed 240 days in a calendar year. On 6.5.2002, when the aforesaid OA came up for hearing, before the State Tribunal, the same was disposed of in view of the judgment passed by Hon^{ble} High Court of HP in CWP no. 371/1999 and other connected matters. Taking advantage of the aforesaid order, the services of the petitioner were terminated w.e.f. 23.8.2002, without following proper procedure as required under the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act). Consequent thereupon, he filed a writ petition no. 1532/02 before the Hon^{ble} High Court which was pleased to pass interim order in his favour and in pursuance thereof, he continued to work. However, as per order dated 3.1.2005 of the Hon^{ble} High Court, the petitioner was directed to approach the appropriate forum, since, the matter, pertained to industrial dispute. After the passing of the aforesaid order, he was served with a notice dated 7.4.2005 vide which his services were terminated w.e.f. 4.5.2005. It is further averred that he had not been paid any retrenchment compensation and that persons junior to him namely S/Shri Gain Chand, Madan lal, Om Parkash & others, as per their names, as given in para ten of the petition, have been retained. In this way, his services were

terminated in utter violation of the various provisions of the Act and that he deserves to be reengaged with all consequential benefits.

4. The contention of petitioner no.2 (Deep Ram) is to this effect that he had joined as daily wage beldar in December, 1997 and that he was terminated w.e.f. June, 1998 and thereafter w.e.f. 7.4.2005, in the identical manner as referred to above, while narrating the facts of the petitioner no.1. He has also assailed his termination on the same grounds as taken by petitioner No.1.

5. Petitioner no.3 (Chet Ram) was appointed as daily wage beldar on 25.1.1998. His services were terminated w.e.f. 25.3.1998 & 7.4.2005 and his allegations are also identical as stated by petitioner No.1.

6. Petitioner No.4 (Dharam Dass) was appointed as daily wage beldar in the year 1993 and was terminated w.e.f. March, 1998, 7.4.2005 & 13.5.2005 and his allegations are also identical as stated by petitioner No.1.

7. Petitioner no.5 (Mahender Lal) was appointed as daily wage beldar in November, 1997. His services were terminated w.e.f. march, 1998 and thereafter w.e.f. 13.6.2005 (should have been 13.5.2005) and his allegations are also identical as stated by petitioner No.1.

8. By filing separate replies, the respondent has contested the claim of the aforesaid petitioners, on having raised preliminary objections qua maintainability, estoppel and delay and laches. On merits, it has been admitted that they, (aforesaid petitioners) had joined their duties as per detail of total working days, attached with the replies. Consequently, upon the dismissal/disposal of OA of the petitioners, their services were dispensed with. When the writs, filed by the petitioners, were dismissed by the Hon'ble High Court, their services were again dispensed with after serving proper notice. It has been pleaded that no person, junior to the petitioners, have been retained/engaged in service except those who had been reengaged in pursuance to the interim directions passed by the Courts. Other allegations denied.

9. By filing rejoinder, the aforesaid petitioners have reiterated their own allegations, by denying those of the respondent.

10. Pleadings of the parties gave rise to the following issues, which were struck on 4.8.2001.

1. Whether the petitioners were illegally terminated by the respondent w.e.f. 7.4.2005 and 13.5.2005 without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect?
..OPP.
2. Whether juniors to the petitioners are retained by the respondent? If so, its effect?
..OPP.
3. If the above issues are proved in affirmative, to what relief, the petitioners are entitled to?
..OPP.
4. Whether the present petition is not maintainable in the present form?
..OPR.
5. Relief.

11. I have heard the learned counsels for the parties and have also gone through the record of the case carefully.

12. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1	Yes.
Issue No.2	Yes.
Issue No.3	Petitioners are entitled to reinstatement, with seniority and continuity, in service but without back wages.
Issue No.4	No.
Relief.	Reference answered in favour of the petitioners and against the respondent, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 & 2.

13. Since, both these issues are interlinked and would require the discussion of common evidence, hence taken up together for decision. Petitioners while appearing in the witness box, as PW-1 (Amar Singh), PW-2 (Deep Ram), PW-3 (Chet Ram), PW-4 (Dharam Dass) and PW-5 (Mahinder Lal) have supported all the material facts including that they had remained in continuous service for more than 240 days in each calendar year and that juniors to them have been engaged/retained by the respondent.

14. The statement of Shri A.C Brice RW-1, is to this effect that the petitioners had completed 240 days in a calendar year and that when their OAs were dismissed by the State Tribunal, their services were terminated as there was no work available with the department. In the cross-examination, he admitted that the petitioners might have been engaged in the year 1997 and that the department did not issue notices to them, when their services were terminated. Ex. PA, Ex. RA-1, Ex. RB, Ex. RB-1 and Ex. RC are the copies of mandays chart of the petitioners. He admitted that Jiya Lal who is junior to the petitioners is still in service and that his services had not been reengaged on the order of the Court.

15. From the mandays chart, aforesaid, it stands duly proved that each of the petitioners had completed 240 days in preceding twelve calendar months from the dates when their services were terminated. The petitioners have also led evidence that juniors to them have been still in service. From the statement of RW-1 (A.C Brice), it is quite apparent that one Shri Jiya Lal, who is junior to the petitioners, is still in service and that his services had not been reengaged on the order of the Court. It has been held by our own Hon^{ble} High Court in a case titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. that:

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25G & 25H of the Act.”

16. From the evidence, which has been referred above, as well as from the legal position, I have no hesitation in holding that the services of the petitioners have been terminated in violation of the provisions of sections 25F, 25G & H of the Act. Consequently, my answer to these issues is in “Yes” accordingly.

Issue No. 3.

17. By giving due regard to above mentioned facts and circumstances, particularly, that the petitioners have failed to prove that they have not been gainfully employed, after their termination, I without hesitation hold that they are not entitled for back wages. However, since their services had been terminated against the provisions of sections 25F, 25G & H of the Act, they are entitled to be reinstated, with seniority and continuity in service but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue No. 4

18. There is nothing on record which may show as to why this petition is not maintainable. Since, pursuance to the reference made to this Court, the petitioners had filed the statement of claim, the same is held to be maintainable because this court is required to answer the reference. Thus, my answer to this issue is in “No”.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioners is allowed and it is ordered that they (petitioners) be reinstated in service, with seniority and continuity but without back wages, from the date of their termination i.e w.e.f. 7.4.2005 (petitioner no. 1,2 &3) & 13.5.2005 (petitioner no. 4&5). Consequently, the reference stands answered in favour of the petitioners and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 1st June, 2010 in the presence of parties counsels.

By order,
(A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref No. 65 of 1998.
Instituted on 26.10.1998.
Decided on. 21.6.2010.

Agya Ram S/o Shri Badri Ram R/o Village Malethi, P.O Nayagaon, District Solan, HP.

Ref No. 63 of 1998.
Instituted on 14.7.1998.
Decided on. 21.6.2010.

Lal Chand S/o Shri Dhani Ram R/o Village Dinan P.O Sharari Ghat, District Solan, HP.

Ref no. 66 of 1998.
Instituted on 14.7.1998.
Decided on. 21.6.2010.

Khem Raj S/o Shri Daulat Ram R/o Village Jawi, P.O Darlaghat, District Solan, HP.

Ref No. 67 of 1998
Instituted on 14.7.1998.
Decided on. 21.6.2010.

Kuldeep Kumar S/o Shri Hukum Chand R/o Village Vhiar, P.O Mehel, District Solan, HP.
.Petitioners.

VS.

1. M/s Gujrat Ambuja Cement Ltd. Darlaghat, District Solan, HP.
2. M/s Ess Ess Engineering Controctor to Gujrat Ambuja Cement Ltd. Darlaghat, District Solan, HP.

.Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.
For respondent: Shri Peeyush Verma, Advocate.

AWARD

1. At the very outset, I would like to point out that as per order dated 21.5.2002, passed in reference no. 65 of 1998 (Shri Agya Ram Vs. Ambuja Cement Ltd.), reference/case no. 63/1998, 64/1998, 66/1998, 101/98, 103/1998, 104/1998 and 105/1998 were ordered to be consolidated with reference no. 65/1998. I may further point out that as is revealed from the material, on record, all the other references, as mentioned above, except reference no. 63/98, 66/98 and 67/1998 which stood consolidated with reference no. 65/1998 stand compromised/settled. Now, this common award purports to dispose of reference nos. 65/1998, 63/1998, 64/1998 and 66/1998.

2. From the separate references for adjudication, made to this Court, in respect of S/Shri Agya Ram, Lal Chand, Hem Raj and Kuldeep Kumar, a common reference is being formulated which reads as under:-

“Whether the plea of the contractor of M/s Ess Ess Engineering Contractor to M/s Gujrat Ambuja Cement Ltd. Darlaghat District Solan Himachal Pradesh that S/shri Agya Ram S/o Badri Ram, Lal Chand S/o Dhani Ram, Khem Raj S/o Daulat Ram and Kuldeep Kumar S/o Hukum Chand, workmen have abandoned the service of their own accord is legal and justified? If not, what relief service benefits and post the concerned workmen are entitled to?”

“Whether the demand of S/Shri Agya Ram S/o Badri Ram, Lal Chand S/o Dhani Ram, Khem Raj S/o Daulat Ram and Kuldeep Kumar S/o Hukum Chand, workmen that their services be taken on the permanent service/roll of the principal company i.e Gujrat Ambuja Cement Ltd. Darlaghat is legal and justified? If yes, to what relief and service benefits concerned workmen are entitled to from the concerned principal employer?”

3. In nutshell the case of the petitioners Agya Ram, Lal Chand, hem Raj and Kuldeep Kumar is that they had been appointed/engaged as Fire & safety Supervisors somewhere in the month of Sep., 1993 by the respondent no.1 and continued in its employment till 1.1.1997 when they were refused work. Although, they had worked under the direct control/supervision of respondent no.1 yet their names were put on the attendance roll of respondent no.2 with ulterior motives by respondent no.1, in order to shirk its liabilities under the labour law/legislation. The petitioners drew their last wages @ Rs. 1950/-, 2250, 1950 and 2250 respectively. It is further averred that they had worked for more than 240 days in each calendar year. During their period, in job, they had neither been charge sheeted nor faced any domestic enquiry. Although, they had also worked over-time but no over-time was paid to them. It is further asserted that as per settlement between respondent no.1 and State Government known as SCHEME FOR THE SETTLEMENT AND REHABILITATION OF OUSTEES OF HIMACHAL AMBUJA CEMENT FACTORY LIMITED DARLAGHAT TEHSIL ARKI DISTRICT SOLAN HIMACHAL PRADESH, the petitioners who were covered as oustee families under clause 2 (1), were entitled for regular employment under respondent no.1. For this reason, their services could not have been terminated. Since, the respondents did not comply with the provisions of section 25N of the Industrial Disputes Act, 1947 (hereinafter referred Act) and that the petitioners never abandoned their job on 1.1.1997, they be deemed to be on the rolls of respondent no.1 or in the alternative to be taken on its roll, by reinstating their services alongwith all the consequential benefits.

4. Petitions have been contested by respondent no.1, on the plea that as per their own submission, the petitioners were employed on the rolls of respondent no.2 and they claim to be taken on the rolls of respondent no.1. As far as replying respondent is concerned, the petitioners are not covered by the definition of workman under section 2(s) of the Act. Under the Act, there is no concept of principal employer. Thus, in the absence of any employer-employee relationship, the petitioners cannot raise Industrial Dispute against the replying respondent. It has further been asserted that matter pertaining to the contract labour and his principal employer are governed by Contract Labour (Regulation & Abolition) Act, 1970 (hereinafter referred Contract Labour Act) and the proper recourse, available to the petitioners was to approach the authorities prescribed under the Contract Labour Act and not under the Industrial Disputes Act. Further, section 30 (1) of the Contract Labour Act provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other. It has further been maintained that

since cement industry has been declared as controlled industry, the appropriate government under the Contract Labour Act is the Central Government. For this reason, Labour Commissioner, HP, has no powers to entertain and refer the matters, pertaining to the petitioners qua the replying respondent (principal employer). Apart from this, the appropriate government could have exercised its power under section 10 only when there exists an industrial dispute as defined under section 2 (k) of the Act. Since, the petitioners were never on the rolls of the replying respondent, there cannot be industrial dispute between them. It has further been asserted that since at no point of time, the petitioners had been the employees of the replying respondent, as they (petitioners) were the employees of respondent no.2, they cannot claim for any preferential claim of appointment with the replying respondent. Other allegations denied.

5. Respondent no.2 has also contested the claim of the petitioners by asserting that GALC (Gujrat Ambuja Cement Ltd.), had given certain project/ work to respondent no.2. The petitioners had been engaged by replying respondent from June, 1996 as Khalasis, at its project site. It is further maintained that the petitioners had refused to do the job, assigned to them, and left without notice. They are not covered by the definition of workman, as given under section 2 (s) of the Act. It has been denied that the petitioners had drawn wages as alleged. On the contrary, they were being paid wages @ Rs. 65/- per day, having been engaged as Khalasis. It has been denied that they had worked for 240 days continuously with the replying respondent. Their services had never been terminated by the replying respondent rather, they had left the job, on their own. Other allegations denied.

6. Pleadings of the parties gave rise to the following issues which were struck on 21.5.2002 in reference No. 65 of 1998.

1. Whether the plea of the contractor that petitioners have abandoned the service, on their own accord, is justified or not? If so, its effect?
..OPR-2.
2. Whether the petitioners are entitled to be taken on permanent service rolls of respondent no.1 as alleged and to what effect?
..OPP.
3. Whether the petitioners are not workmen and the dispute is not an Industrial dispute as alleged?
..OPR-1.
4. Whether there is no relationship between petitioners and employers as alleged?
..OPR.
5. Relief.

7. Before I proceed further, it is worthwhile to point out that only Shri Agya Ram has examined himself as his own witness in the instant petition (reference 65 of 1998). As far as other petitioners namely Lal Chand, Khem Raj and Kuldeep Kumar are concerned, they have not examined themselves in support of their respective claim petitions (reference nos. 63 of 1998, 66 of 1998 and 67 of 1998). It is further to be noted that as far as the statement of Shri Agya Ram (PW-1) is concerned, it only pertains to his case (reference no.65 of 1998) and that he has not stated anything as far as the other petitioners, aforesaid, are concerned. In these circumstances, the statement of Shri Agya Ram (PW-1) cannot be read in evidence as far as the claim petitions of the other petitioners are concerned which stand consolidated with this petition (reference no. 65 of 1998). The *Hon'ble Supreme Court in 1999 (2) Current Civil Cases 171 (SC), Ishwar Bhai C. Patel Vs. Harihar Bohara & another*, has held that:

“if a defendant does not enter the witness box to make a statement on oath in support of the pleadings set out in the written statement, an adverse inference would arise that what he stated in the written statement was not correct”.

8. Applying the ratio of the aforesaid case law, I have no hesitation in holding that as far as petitioners S/Shri Lal Chand, Khem Raj and Kuldeep Kumar are concerned, they have failed to establish

their respective claims that they are entitled to be taken on permanent service rolls of respondent no.1, as per issue no.2, the onus of which was upon them. Thus, for their failure to have stepped into the witness box in support of their respective claims, the claim petitions, filed by them (reference nos. 63/1998, 66/1998 and 67/1998) deserves to be dismissed on this score only.

9. In support of his claim petition (reference no. 65 of 1998), Shri Agya Ram has examined himself as PW-1 and also M.K Verma (PW-2), besides relying upon documentary evidence. On the other hand, in support of its plea, the respondent no.1 has examined Dr. S.S Saini.

10. I have heard the learned AR for the petitioners and Ld. Counsel for the respondents and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1	Decided accordingly.
Issue No.2	No
Issue No.3	Yes.
Issue No.4	Yes.
Relief.	Reference answered in favour of the respondents and against the petitioners, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1.

12. The plea of respondent no.1, is to this effect that Gujrat Ambuja Cement Ltd. (GACL), Darlaghat had given certain project/modification works to respondent no.2 at their Darlaghat site and for this reason, the services of the petitioner had been engaged as Khalasi from June, 1996 but they refused to do the job, assigned to them and left without notice. Now, when the case of the petitioners as set out in their claim petitions is considered, it is highlighted that they had been appointed to the post of Fire and Safety Supervisor in the month of September, 1993 by respondent no.1 and that on 1.1.1997, their services were disengaged as they refused to do work. It has further been averred that their names had been put on the attendance rolls of respondent no.2 with ulterior motives and designs. From the contention of the petitioners, it is abundantly clear that they (petitioners) do not admit that their services had been engaged by respondent no.2, at any point of time. In case the petitioners had admitted that their services had been engaged, by respondent no.2, in order to perform duties as Fire and Safety Supervisor, for respondent no.1 and that such a contract was sham and camouflaged in order to defeat the provisions of the Act, the reference which has been made to this Court, to this effect that the petitioners including Agya Ram, in the instant case (reference no.65/1998), had abandoned their services, as is the plea of contractor (respondent no.2), could have been relevant.

13. When regard is given to the statement of petitioner (PW-1), he supports this fact, on oath, that he was inducted into the employment of respondent no.1 as Fire and Safety Supervisor and continued to remain as such till 1.1.1997, when he was removed from service without any notice, retrenchment compensation and charge sheet. His, this version, clearly goes to show that, on oath, he supports his such averments as made in the claim petition that his services had been engaged by the respondent no.1 as Fire & Safety Supervisor. Neither in the claim petition nor in his statement, before this Court (PW-1), he has stated, this fact, that his services had, at any point of time, been engaged by respondent no.2 (Contractor). In the cross examination, he (PW-1) has further made it clear that to his Authorized Representative, he had told that as far as respondent no.2 is concerned, he has nothing to do with it. He further admitted to this effect that till date, he has no claim, whatsoever, against respondent no.2, who had not, at all, restrained him from continuing with his work.

14. Undoubtedly, the onus to prove this issue is upon respondent no.2. It is to be noted that as far as respondent no.2, is concerned, no evidence has been led in support of this issue. As a matter of fact, respondent No.2 has not examined any witness in support of its plea/defence as taken in the reply.

15. The stand of respondent no.2 is that the petitioner, who had been engaged as Khalasi w.e.f. June, 1996 had left the job, on his own, and in respect of such plea of the contractor (respondent no.2), reference has been made to the effect that the petitioner has abandoned the job, on his own, is justified or not? If not to what relief? As far as this part of the reference, is concerned, the court has to look into the evidence, which has come on record and also the contention of the petitioner. May it be stated that the petitioner (Agya Ram) does not allege that at any point of time, since September, 1993 till 1.1.1997, when his services were disengaged/terminated, he had been engaged or remained on the rolls of respondent no.2 (contractor). Even, while appearing in the witness box as PW-1, he made it clear that he never worked for respondent no.2, with whom, he has nothing to do. He has also no claim, whatsoever, against it (respondent no.2). When the petitioner, on oath, says that he has no claim, whatsoever, against respondent no.2 and that he had not worked with it, there was no legal necessity for respondent no.2 to have led evidence to prove issue no.1, the onus of which lies upon it. I may mention that firstly, the petitioner had led his evidence and only thereafter, the respondents were called upon to lead their evidence. In this way, having regard to the allegations, made by the petitioner, in his claim petition coupled with his own statement as PW-1, I am inclined to hold that the plea of the contractor (respondent no.2) that the petitioner had abandoned the job, on his own, does not survive and for this reason, this issue is answered accordingly.

Issue No. 2.

16. Ld. AR for the petitioner has argued that from the statement of the petitioner (PW-1), it has been duly proved that he had been inducted in the employment of respondent no.1 w.e.f. Sep. 1993. By referring to the statement of Shri M.K Verma, (PW-2). Ld. AR, further urged that his evidence goes to show that the contractor (respondent no.2) used to report to him (PW-2), regarding Safety Measures. When page no.5 of Safety Log Book, mark A was shown to this witness firstly he admitted his signatures thereupon but again stated that the signatures did not appear to be that of his. Upon his such version, the original Safety Log Book was retained and consequent upon the filing of an application, for comparing the signatures of said witness, M.K Verma, as contained in register mark A, B & C, which was allowed as per order dated 8.6.2005, Shri M.K Verma was summoned in the Court and his specimen signatures were taken on 13.3.2007 and the same were sent to the Government Examiner of Questioned Documents alongwith his admitted and disputed signatures for opinion. The report of the examiner was obtained and as per that report, the disputed signatures were opined to be that of Shri M.K Verma. Ld. AR thus, further, urged that from the report of the Government Examiner of Questioned Documents, it stood established that the petitioner had been working as Fire & Safety Supervisor for respondent no.1 and that in order to defeat his legal right under the Act, he was shown on the roll of respondent no.2. In support of his contention that the petitioner should be deemed to be continuing in the services of respondent no.1, from the date of his disengagement/termination, reliance has been placed on *2002 LAB IC, 1091, M/s Indian Farmers Fertilizers Co-op. Ltd. Vs. Industrial Tribunal-I, Allahabad and others.* Ld. AR further urged that from the statement of Dr. S.S Saini (RW-1), it is quite clear that a Safety Manager has been posted in the factory of respondent no.1. From his such version, the plea of the petitioner that he had been engaged as Fire & Safety Supervisor by respondent no.1 gets support. He further urged that from the material, on record, it is quite evident that the services of the petitioner has been shown on the roll of respondent no.2 (contractor), just to defeat the provisions of the Act and further that such a contract between respondent no.1 & 2 is sham or camouflage. As the petitioner has been proved to be the employee/worker of respondent no.1 and also that his services were illegally dispensed with/terminated, therefore, he deserves to be taken on the permanent service rolls of respondent no.1 as he was working as Fire & Safety Supervisor for it.

17. On the other hand, it has been urged on behalf of respondent no.1 that there is no evidence whatsoever, on record, which could go to show that the petitioner had been inducted on the roll of respondent no.1 as Fire & Safety Supervisor. In this regard, the petitioner has not produced any appointment letter or salary slip. Ld. Counsel further urged that documents Ex. PW-1/10 & Ex. PW-1/11, cannot be relied upon from the mere fact that they have been exhibited. These documents were required to be proved in accordance with law and it was for the petitioner to have explained as to how those documents came in his possession/custody. The documents, aforesaid, are only the copies and not the originals and that on the same, the alleged author has disputed his signatures. It has been further submitted that no reliance can be placed on the opinion of the Government Examiner of Questioned Documents because it was neither tendered in evidence nor Shri Mahinder Singh, Deputy Examiner, Government Examiner of Questioned Documents, who gave his report/opinion regarding the questioned documents, has been examined in the

Court. For want of his examination, a valuable right of respondent no.1 to cross examine him has been denied. Ld. Counsel further urged that there is no evidence, whatsoever, on record, which could go to show that the alleged contract between respondent no.1 & 2 is sham and camouflage just to defeat the legal right of the petitioner, under the Act.

18. As already observed and pointed out, the petitioner does not state himself to be the employee/worker of respondent no.2 (Contractor). Before this court, it has been stated by the petitioner (PW-1) that he was inducted into the employment of respondent no.1 as Fire & Safety Supervisor and continued to remain as such till 1.1.1997, when he was removed from service without any notice, retrenchment compensation and charge sheet. Since, his land had been acquired for the factory, he is an oustee and that as per notification of the Government of HP, Ex. PW-1/B, for resettlement and rehabilitation, he was kept on job. Shri M.K Verma was his immediate officer. The work report, done by him is Ex. PW-1/10 and duty circulars, issued by Shri M.K Verma, Safety Manager is Ex. PW-1/11. His demand notice is Ex. PW-1/12 and replies filed thereto, are Ex. PW-1/13 & Ex. PW-1/14. He had been employed in the safety department of the company and the day to day work done by him is mark B (69 pages). Another document, pertaining to his duty is mark C (97 pages). He had imparted training to the workers of the company regarding fire fighting and operating fire instruments. From the date of his induction into the employment of the company (respondent no.1), he worked continuously till 1.1.1997 when he was removed. In the cross examination, he has stated that he had not been given any appointment letter but admitted the suggestion that when a person is engaged/appointed, appointment letter is given. He expressed his ignorance that respondent no.1 had formed a trust for the collection of Provident Fund, for its employees. He was not subscribing towards EPF. He was being paid salary through salary slips which he has not produced. He used to sign the payment vouchers on receipt of salary but the same have not produced by him. Regarding his salary, he has not summoned any record. He had not been called for interview through any interview letter. He denied that Shri Rajinder Sharma, Proprietor of respondent no.2 had admitted him to be his employee. He expressed his ignorance that said Rajinder Sharma had offered to engage him on alternative job. Ex. PW-1/10 does not bear the stamp of any company official.

19. Ex. RA is the affidavit of Dr. S.S Saini (RW-1) wherein he has supported all the relevant facts as taken in the reply including that the petitioner was employed on the rolls of respondent no.2 (contractor). Although, the assertion of the petitioner is to this effect that he had been inducted into the employment of respondent no.1 as Fire & Safety Supervisor w.e.f. September, 1993 but on the record, he has not brought any such document which could go to prove his such assertion. In case, he had been employed by respondent no.1, this fact, he could have proved by producing appointment letter or salary slips. Apart from this, he could have got summoned the record pertaining to the payment vouchers which he used to sign in token of having received the salary. Undoubtedly, he (petitioner) has also examined Shri M.K Verma (PW-2) but as per this witness, he does not know the petitioner Agya Ram. From the statement of this witness (PW-2), it is not proved that he (Petitioner) was in the employment of respondent no.1 (company). It is to be noted that the petitioner has not examined any other co-worker of the respondent company who could have supported his such version to be in the employment of respondent no.1. From his bare statement which has not been supported with any documentary proof, as referred to above, it is not proved that he had been inducted as Fire & Safety Supervisor by respondent no.1, directly, w.e.f. September, 1993.

20. Ld. AR for the petitioner has put reliance on documents Ex. PW-1/10 & Ex. PW-1/11 in support of his contention that the same go to prove that the petitioner was in the employment of respondent no.1. It is true that these documents have been exhibited but from their mere exhibition, it cannot be said that these documents have been proved as per law. It has been specifically stated by Shri M.K Verma (PW-2) that document Ex. PW-1/11 does not bear his signatures. As far as Ex. PW-1/10 concerned, it is the photocopy of fire extinguisher record. This document (Ex. PW-1/10) does not go to show that on it, Shri M.K verma has admitted his signatures. From this document, it is also not clear that as to who has prepared it and how it came into the custody of the petitioner. It has been rightly argued by Ld. Counsel for respondent no.1 that no reliance can be placed on the aforesaid documents to arrive at a conclusion that the petitioner had been inducted in the employment of respondent no.1, particularly, when the petitioner has failed to prove this fact either by way of documentary or through convincing and reliable oral evidence.

21. It is true that for getting proved the signatures of Shri M.K Verma (PW-2), on the registers as marked A, B & C, the petitioner had taken recourse to get the same examined through Government Examiner of Questioned Documents by filing an application, which was allowed and in consequence thereof, the disputed signatures were sent to the Examiner and to this effect, report obtained. It has been rightly argued by the counsel for respondent no.1 that no reliance can be placed on the report of the Examiner because neither it has been tendered in evidence nor the petitioner took necessary steps for getting the Examiner examined in order to rely upon the report. For want of doing so, definitely, respondent no.1 has lost its valuable right to cross examine the expert as far as his opinion/report is concerned.

22. In the statement of Agya Ram (PW-1), it has come that he had never worked with the contractor (respondent no.2). When he (petitioner) does not say himself to be the worker/employee of respondent no.2 (contractor), the contention of Ld. AR for the petitioner, that the alleged contract between respondent no.1 & 2 is sham and camouflage, does not hold good. I may mention that it was for the petitioner to prove that initially he had been employed/engaged by the contractor (respondent no.2) and further that at what point of time a direct link was established between him and principal employer (respondent no.1) eliminating the contractor (respondent no.2) from the scene. Had it been his such case, he was justified in raising the demand that he should be declared as the workman of the principal employer (respondent no.1) by proving with convincing and reliable evidence that the contract between the principal employer (respondent no.1) and labour contractor (respondent no.2) was a mere paper arrangement or an eye wash or a camouflage or a ruse or a façade or the name lender.

23. I do not find any legal force in the contention of Ld. AR for petitioner that the petitioner has proved its case so as to be taken on the permanent service rolls of respondent no.1. The case law relied upon (supra), is also of no help to the case of the petitioner. On the contrary, it has been rightly argued on behalf of respondent no.1 that the petitioner has miserably failed to prove this issue. Consequently, for my discussion, foregoing, I hold that the petitioner has failed to prove this issue to which my answer in is "No".

Issue No. 3 & 4

24. Being interlinked and correlated, both these issues are taken up together for discussion to avoid repetition. The case of the petitioner is that he was indicated as Fire & Safety Supervisor by respondent no.1, but as held above, while deciding issue no.2, he has failed to prove this fact. The petitioner while appearing in the witness box as PW-1, has stated that he had never worked with the contractor. In this way, from the evidence, on record, coupled with his own deposition, it is quite evident that neither the petitioner has proved himself to be the employee of respondent no.1 nor that of respondent no.2. Since, on the record, no relationship of employee and employer has been established between the petitioner and respondents, the dispute cannot be said to have fallen under the definition of „Industrial Disputes“ as per section 2 (s) of the Act. Consequently, by agreeing with the contention of the Ld. Counsel for respondent no.1, these issues are decided accordingly in "Yes".

Relief.

As a sequel to my findings on the aforesaid issues, this petition (65/1998) alongwith consolidated petitions (reference nos. 63/1998, 66/1998 and 67/1998), stands dismissed with the result, the references, made to this court stand answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 21st June, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref no. 86 of 2001.
Instituted on 16.5.2001.
Decided on 16.6.2010.

Ashok Kumar Singh, House no. 38, Ward no.2, Kalka, District Panchkula.
..Petitioner.

VS.

The H.D Arora Admn. Manager M/s Hitkari Industries Ltd., Plot no.18, Sector-1, Parwanoo, HP.
..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Niranjana Verma, Advocate.
For respondent: Shri Tarun Gupta, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-
 1. ***"Whether Shri A.K Singh is covered by the definition of workman under section 2 (s) of the I.D Act. If not its effects?"***
 2. ***"If issue no.1 is decided in favour of Shri A.K Singh then whether the discharge from service w.e.f. 22.4.2000 by Shri H.S Arora, Admn. Manager M/s hitkari Industries, Ltd., Plot no. 18, section -1 Parwanoo, HP is legal and justified? If so, what relief, service benefits and compensation, the above said workman is entitled to?"***

2. Briefly, the case of the petitioner is that initially he had been joined as printing operator in M/s Hitkari Poteries Ltd. Parwanoo, which is sister concern of respondent w.e.f. 16.6.1990 and thereafter, he was transferred to its 2nd unit which is running business under the name & style "Flexi Pack" at Parwanoo. W.e.f. 1.4.1995, without changing the nature of duties, he was promoted and designated as trainee production supervisor by the respondent but he continued to carry the work of printing operator. Again, he was transferred to another unit known as Hitkari Industries Pvt. Ltd., Parwanoo, on 1.2.1999. It is alleged that he was made to perform the duties, on all four sister concerns, as referred to above, as and when so required by the management and that his last drawn salary was Rs. 5,125/- per month. Since, the workmen, employed by the respondent, had felt need to organize themselves by framing a union, the petitioner was selected as General Secretary of the union. It is averred that after the formation of the union, the respondent management started indulging in unfair labour practice by harassing the workmen and with a view to break their unity. By adopting unethical mean the management started coercing the workmen, to sign plain papers with the help of the muscleman, failing which to dispense with their services. On 22.4.2000, the petitioner had been called by one Shri H.S Arora, in his cabin, at about, 5.00 PM, who asked him to resign from service and further to sign blank paper. When he (petitioner) refused to oblige and resisted the pressure, said Arora became in void and with the help of security guards, he (petitioner) was forcibly removed from the premises. Thereafter, vide letter dated 24.4.2000, he raised a Industrial Dispute in which conciliation could not take place, It has further been asserted that since the petitioner had worked under the directions of his superior officers and was required to do more than one kind of work such as manual, technical as well as clerical, he falls within the definition of workman as per section 2 (s) of the Industrial Disputes Act, 1947 (hereinafter referred Act). With a view to punish him for his legitimate trade union activities, he was terminated from service by the respondent, who (respondent) is also guilty of unfair labour practice. For this reason, he deserves to be reinstated in service with all the consequential benefits.

3. Petition has been contested on having raised preliminary objections including that the petitioner is not covered by the definition of workman under section 2 (s) of the Act and that for this reason, the petition is not maintainable. On merits, it has been denied that the respondent has sister concerns as alleged by the petitioner. On 1.2.1999, the petitioner had joined as production supervisor and was drawing salary @ Rs. 5125/- per month. It is further pleaded that on concocted/fabricated facts, in order to cover up his negligence, the petitioner has filed this claim petition. As a matter of fact, he was the Incharge of printing section and that the films so prepared by his section, were rejected. When he was asked to explain the lapse, which resulted in the rejection of the films, instead of furnishing the same, he ran out and did not turn up after 22.4.2000. In order to blackmail the management and to get money, the petitioner raised demand notice. It has further been specifically asserted that the respondent company had only one unit at Plot no.18, Sector-1, Parwanoo and that it had no other units at Parwanoo therefore, the question to transfer the petitioner from one unit to another do not arise. Other allegations denied.

4. Pleadings of the parties gave rise to the following issues which were struck on 17.6.2003

1. Whether the petitioner has been disengaged from service illegally and unjustifiably as if so its effect?

. .OPP.

2. Whether the petitioner is not a workman within the definition of section 2 (s) of the I.D Act, 1947? If so, its effect?

. .OPR.

3. Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1	No.
Issue No.2	Yes.
Relief.	Reference answered against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1

7. The contention of the petitioner is that on 22.4.2000, he had been asked by one Shri H.S Arora to resign from service and also to sign blank paper which he refused to do and for this reason, he was forcibly removed from the premises with the help of Security Guards. It has also been averred by the petitioner that since he was the General Secretary of the union and that was indulged in legitimate trade union activities, for this reason, by adopting unfair labour practice, he was removed from service.

8. On the contrary, the defence version is to this effect that since a lot of films, which had been printed in the printing section, of which the petitioner was the Incharge, had been rejected, for this reason, his explanation had been called by the management but instead of submitting his explanation, he ran away and did not turn up after 22.4.2000. From the stand taken by the respondent, the services of the petitioner were never terminated but on his own, he left the job on 22.4.2000 and thereafter did not turn up.

9. Petitioner while appearing the witness box as PW-1, has supported all the material facts as narrated in the petition, on oath, including that initially he had been engaged as printing operator w.e.f. 16.7.1990 as per appointment letter Ex. PW-1/A and that w.e.f. 1.4.1995, he was designated as trainee production supervisor in Flexi Pack, on transfer and that the nature of his duties remained the same that of printing operator. In Feb., 1999, he was again transferred by the respondent to Hitkari Industries, Parwanoo

which is also its sister concern. Since, the workmen organized themselves into a union, he was selected General Secretary. After formation of union, the respondent started harassing the workmen with the view to break their unity. On 22.4.2000, he was called by Administrative Officer in his office and was asked to sign blank paper and also to resign which he refused to do. Upon this, he was forcibly removed, with the help of the security guards. He raised demand notice vide Ex. PW-1/B but the dispute could not be reconciled. Ex. PW-1/4 to Ex. PW-1/68, are the gate passes, issued from time to time and Ex. PW-1/69 is letter, written to Labour Inspector. Copies of Identity cards, issued to workmen are Ex. PW-1/72 to Ex. PW-1/77. Shri K.M Pandey, was the General Manager, looking after all four units of the respondent. Ex. PW-1/78 & Ex. PW-1/79, are his salary slips. Ex. PW-1/89 is the certificate, issued by K.M Pandey. In the cross examination, he admitted of having joined the respondent on 1.2.1999. He has no resolution of the union to select him as General Secretary and that the union was not registered. Regarding having been asked to forcibly tender resignation and to sign blank paper, he had not lodged any complaint. He could not name the security guard who had pushed him out of the factory gate. His father has been providing him livelihood expenses to whom he has been helping in agricultural work.

10. The version of Shri A.K Dutt (RW-1), is to this effect that he has been conversant with the facts of the case and making his statement on the basis of record. On 1.2.1997, the petitioner had joined his duties as printing supervisor and he was also working as shift Incharge. On 18.4.2000, during his shift, 225 k.g printing film, valuing Rs. 35,000/- approximately was spoiled. For this reason, his explanation had been called but instead of submitting the same, the petitioner absented from duties. As per the direction of the Court, the petitioner had been directed to resume his duties in the factory. Consequently, thereupon, he came to the factory only for one day and thereafter never came back. He was also informed to resume his duties through letter but of no avail. The respondent company is still willing to take back his services if he is so interested. In the cross examination, he has stated that letter Ex. PW-1/A is not of their company but it is of its sister concern. Administrative Head of both the firms was Mr. Arora. Gate Passes, Ex. PW-1/A to Ex. PW-1/68 are of their firm. He denied that the petitioner had not wasted any film material.

11. Shri Mahinder Nath Pandey (RW-2), has appeared in the witness box to say that since September, 1990, he has been the Personnel Officer of the respondent company. Vide application Ex. RA, the petitioner had applied to the company for the post of Supervisor and that he had been appointed as such. As printing supervisor, the duties of the petitioner were to see production and he was also controlling the work of shift. During his tenure, the printing film was spoiled and when his explanation was called, he left the job. The report about the rejection of twelve rolls of films is marked X. The explanation is Ex. RD, which is signed by Subhash Sharma (Production Manager). No reply of the explanation has been received, as per record. During conciliation proceedings, the company asked the petitioner to resume his duties but he refused to join. Even, he was directed by this court to join his duties but he did not do the needful. Although, as per Court directions, he had given his joining vide Ex. RC but he remained for duty only for one day i.e. 14.7.2006 and thereafter, did not turn up. Vide letter Ex. RE, he was asked to join his duties but of no avail. In the cross examination, he has stated that explanation had been issued by hand which was received by the petitioner as per Ex. RB. He denied that Ex. RB does not bear the signature of the petitioner and that in the year, 2005, when he (petitioner) had come to join his duties, he did not permit him to join. He denied that on 22.4.2000, Mr. Arora has asked to sign certain stamp paper which he refused and for this reason, he had been terminated from service.

12. From the statement of Shri Mahinder Nath Pandey (RW-2), it has been proved that when the petitioner was controlling the work of shift during his tenure, printing films were spoiled and that vide letter Ex. PB, his explanation was called. His version further goes to prove that Ex. RB, had been received by the petitioner. It is further proved that to the explanation, no reply was filed by the petitioner and that thereafter, he never reported for duties. The evidence of Shri A.K Dutt (RW-1) goes to prove this fact that during the shift of the petitioner, 225 k.g printing film valuing Rs. 35,000/- approximately, had been spoiled and in this regard, his explanation had been called and thereafter, the petitioner absented himself from duties.

13. To support his allegation that on 22.4.2000, Shri Arora, Administrative manager had called him in his office and that he was asked to sign blank stamp paper besides tender his resignation, the petitioner has stepped into witness box as PW-1. In the cross examination, he has stated that regarding this incident, he has not lodged any complaint. He has also failed to name the security guard/guards who had pushed him out of the factory gate. At this stage, I would like to observe that had any such incident taken

place, the same was required to be witnessed by the workers or other persons who could have been around at that time. The alleged occurrence took place, when the petitioner was allegedly called by Shri Arora in his office. Further, it could have been known by the petitioner as to who were the security guard/guards, who had allegedly thrown him out of the factory gate. It has also stated by the petitioner that he was the General Secretary of the union. As far as his such contention is concerned, the same is not proved either from documentary evidence or oral. He has not examined any of the worker, in support of his such version that he had been selected as General Secretary of the union. In case, he was the General Secretary of the union, the alleged act of Mr. Arora, asking him to sign on plank stamp papers and to tender his resignation, would have definitely agitate the workers of the respondent company who in all probabilities were to come in support of the petitioner. Moreover, if such, alleged acume had actually taken place, it has been the natural conduct of the petitioner to have either lodged a complaint with Labour Inspector or the concerned Police Station, besides informing his co-workers. It is further to be pointed out that in support of the alleged accrume, the petitioner has not examined any witness. In these circumstances, the version of the petitioner that on 22.4.2000, he had been called by Mr. Arora in his Cabin and that he had been asked to sign blank stamp papers besides tendering his resignation, is not proved. On the contrary, the respondent has led convincing and reliable evidence to prove that when the petitioner was the Incharge of printing section, about 225 k.g of printing film valuing Rs. 35,000/- approximately, was spoiled and in this regard, his explanation was called vide Ex. RB, which he did not reply.

14. The contention of the petitioner is that his services had been terminated by the respondent but in support of his such plea, there is no evidence. On the contrary, it is quite evident, on record, that, on his own, he had left the job, when his explanation for the aforesaid called for, which he did not reply. Further in the statement of Shri Mohinder Nath Pandey (RW-2), it has come that as per court directions, the petitioner had given his joining for one day i.e. 4.7.2006 and thereafter he never came back. Vide letter Ex. RD, he was again asked to join his duties but he failed to do so.

15. In the statement of Shri A.K Dutt (RW-1), it has come that the respondent company is still willing to take back the services of the petitioner if he is so interested. His statement was recorded on 19.7.2007. Had, the services of the petitioner been terminated by the respondent, there was no occasion for A.K Dutt (RW-1) to have stated so. The conduct of the petitioner by joining duties as per court directions on 14.7.2006 vide Ex. RC and thereafter, no turning up for the same, further goes to show that, on his own, he had left the job and that his allegation to this effect that his services had been terminated on 22.4.2000 is totally false/incorrect. Even, the respondent vide letter Ex. RD, had asked him to join his duties but despite the same, the failed to do the needful. In these circumstances, there is no evidence whatsoever, on record, led by the petitioner which could go to prove that he had been disengaged from service, illegally and in an unjustified manner. Consequently, my answer to this issue is in "No".

Issue No.2.

16. An objection has been raised by the respondent that since the petitioner had applied for printing supervisor vide Ex. RD and that his appointment was made as such, he does not fall within the definition of workman as per section 2 (s) of the Act. Ld. Counsel further submitted that as per the version of the petitioner, he was drawn wages @ Rs. 5,125/- per month. On the contrary, the plea of the petitioner is to this effect that initially he had been engaged as printing operator on 16.7.1990 and thereafter he was transferred to other sister units of the respondent and finally on 1.2.1999, he joined as printing supervisor with the respondent company but kept on doing the work of printing operator. In his statement as PW-1, he supported this fact that he used to operate printing machine, throughout, during his service tenure and was no control over the workers. He only performed the duties of manual nature and that 3-4 workers were under his control.

17. Shri A.K Dutt (RW-1), has categorically stated that the petitioner joined his duties on 1.2.1999 as printing supervisor and he was also working as shift Incharge. His duties involved supervision of shift work, printing, leave and relief of workmen and insuring that the printing is done as per the laid down procedure. His such version remained un-impeached/unchallenged for want of cross examination. this goes to show that the petitioner admits his version that he had been the printing supervisor as well as also shift Incharge, as stated above. According to Shri Santosh Kumar (RW-3), the petitioner who was production supervisor was the Incharge of the entire shift. In his such capacity, the operator and helpers were under him

and he was liable to take the work from all the workers. The petitioner was also furnishing the production reports which are Ex. R-1 to Ex. R-12. He used to recommend the leave of all the workers, working under him besides issuing gate passes to the workers. In the cross examination, he denied that the work of the petitioner was machine operator. As per Shri Mohinder Nath Pandey (RW-2), about 30 to 40 persons were working under the petitioner who was printing supervisor and his duties were to see the production besides controlling the work of the shift.

18. From the evidence, which has been referred to above, it stands duly proved that the petitioner had the responsibility to directly control the workmen of production and also controlling the work of printing shift. The evidence further goes to show that he was also responsible for taking work, from the workers, as well as to recommend their leaves. Thus, when regard is given to the supervisory nature of work, done by him (petitioner) I have no hesitation in holding that he (petitioner) does not fall under the definition of workman as per section 2 (s) of the Act. By holding so, my answer to this issue is in "yes".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 16th June, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref no. 93 of 2000.
Instituted on 10.7.2000.
Decided on. 30.6.2010.

Om Prakash S/o Shri Khem Raj C/o Shri J.C Bhardwaj, HP AITUC HQ, Saproon, District Solan,
HP.

. .Petitioner.

VS.

M/s, Cosmo Ferrities Ltd. Jabli, District Solan, HP.

. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Id. AR.
For respondent: Shri Rahul Mahajan, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Om Prakash ex worker by the management of M/s, Cosmo Ferrities Ltd. Parwanoo, District Solan, HP w.e.f. 19.1.1999, without compliance of section 25F of the Industrial Disputes Act, 1947 by holding the enquiry ex parte without affording

the reasonable opportunity of being heard to the worker in consonance with the principles of fair-play and natural justice, is legal and justified? If not to what relief of service benefits and amount of compensation, Shri Om Prakash is entitled to?"

2. In nutshell, the case of the petitioner is that he had joined the services of respondent company during the month of June, 1989, and continued, as such, till 19.1.1999, when he was dismissed from service vide letter dated 19.1.1999. In this way, for about ten years, he had continued to remain in the employment of the respondent with excellent past service record. It is further averred that with malafide designs and pre planning, the management of the respondent, always intended to dispense with his services, due to his activities as trade unionist. Although, the so called domestic inquiry was conducted but it was merely an eye wash as the management intended to get proved a concocted story. Even the chargesheet issued vide letter dated, 1.11.1998, was biased, unfair, vague and defective for the reason that it was in English language instead of Hindi and that the list of management witnesses as well as documents, in support of the charges, were not supplied to him. Further, the chargesheet contained charges regarding some kind of strike etc. which was beyond the scope of the jurisdiction of the management. In the charge sheet, the management, itself, had declared the strike to be illegal for the purpose of framing charges against him. It has further been averred that the Enquiry Officer was appointed by the management as per letter dated 16.11.1998 but the order regarding the same, was silent, in respect of the adjudication qua the reply, file by him (petitioner). Moreover, the Enquiry Officer was a senior manager of the factory, who was appointed by the management in order to get achieved the desired results. Even, the Enquiry Officer conducted the proceedings without settlement of the procedure. For this reason, there was no occasion for him (petitioner) to have known about the opportunity to defend himself. He was also not afforded opportunity to get appointed the defence assistant. Despite the fact that he was not conversant with the English language, the Enquiry Officer conducted the proceedings in English, on the basis of which, the so called enquiry report was based. Further the management witnesses were partial and that no independent witnesses were examined. Even, the petitioner had not been afforded proper opportunity to cross examine the management witnesses for the reason that he could not have known as to what had been written in the proceedings which were in English. The enquiry report was also prepared in English which did not contain any discussion regarding the version, made by the management witnesses. Since, the whole enquiry had been conducted against the provisions of natural justice, it gets vitiated. There are also contradictions in the statement of the witnesses and for this reason, for want of sufficient material before the Enquiry Officer, the charges could not said to have been proved. Apart from this, the punishment to dismiss the petitioner from the employment was extreme and a minor penalty was required to be imposed, in case, it is presumed that the charges against him had stood proved. Against the aforesaid backdrop, the dismissal order against him vide letter dated 19.1.1999 deserves to be set aside and he (petitioner) deserves to be reinstated with seniority, continuity, full back wages and other consequential service benefits by setting aside the enquiry proceedings.

3. The claim of the petitioner has been contested on having raised preliminary objection qua maintainability. On merits, it has been asserted that the petitioner had been supplied with all the relevant documents/material during enquiry proceedings which was conducted by the Enquiry Officer, in just, fair and proper manner by following all the principles of natural justice. At no point of time, during enquiry proceedings, any objection was raised by the petitioner that the same should be conducted in Hindi and that he (petitioner) be allowed to be represented through authorized representative. Even, no objection was raised regarding the appointment of Enquiry Officer. On the contrary, the petitioner participated in the enquiry proceedings and he was duly supplied with the show cause notice, chargesheet, list of witnesses and other relevant records in Hindi also. In these circumstances, it is not justified, on the part of the petitioner, to allege that he had been condemned unheard. The enquiry record goes to show that a fair and reasoned enquiry had been conducted and the petitioner was given ample opportunity to put forth his case and to defend himself. Even, he had not objected for holding the enquiry in English. It is further asserted that, at no point of time, during the enquiry proceedings, he had not raised any such objection that he should be allowed to be represented through authorized representative. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 19.7.2001.

1. Whether the termination of the petitioner is illegal and unjustified as alleged? . .OPP.
2. Whether the petition is not maintainable as alleged? . .OPR.
3. Whether termination was ordered by respondent after holding a fair and legal enquiry as alleged? . .OPR.
4. Relief.

6. I have heard the learned AR for the petitioner and Ld. Counsel for the respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1	Yes.
Issue No.2	No.
Issue No.3	No.
Relief.	Reference answered in favour of the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 3

8. Ld. Counsel for the respondent has submitted with vehemence that on the basis of proper and fair enquiry, which had been conducted in accordance with the principles of natural justice, the charges against the petitioner had stood proved and thereafter, on having served a notice, upon him, and receiving his reply, his services were discharged by imposing lesser punishment. He further urged that the petitioner had been served with the chargesheet alongwith documents and he was afforded opportunity to be represented by a defence assistant and further that opportunity to cross examine the witnesses, was also given to him. Thus, it cannot be said that the Enquiry Officer had not followed the prescribed procedure as per the principles of natural justice. Ld. Counsel further urged that since the petitioner had not challenged, at any point of time, during the enquiry proceedings, that the same should be conducted in Hindi, for this reason, it does not lie in his mouth to assail the enquiry proceedings, on this score that the same was not conducted in Hindi. Thus, no fault can be found in the enquiry, so conducted against the petitioner and the punishment, imposed upon him.

9. On the other hand, Ld. AR for the petitioner urged that the charge sheet which is alleged to have been served upon the petitioner was not accompanied with any document or the list of witnesses. Even, the Enquiry Officer did not make known to the petitioner, about the procedure which was to be followed by him, in order to conduct the enquiry. He further urged that the Enquiry Officer, who was the senior manager of the respondent, was under the influence of the management and for this reason, the enquiry proceedings were biased against the petitioner. Even the petitioner was not afforded any opportunity to get his case defended through defence assistant. He was also not given proper opportunity to cross examine the witnesses of the management, who were not independent. Ld. AR further submitted that since, the petitioner was not conversant with English language, the enquiry proceedings were required to be conducted in Hindi. The enquiry report was also to be prepared in the same language. The petitioner was also not made available the Hindi version of the proceedings and enquiry report when he demanded the same. In these circumstances, the enquiry, which was got conducted against the petitioner cannot be said to have been conducted by following the principles of natural justice and for this reason, it requires to be set aside. Ld. AR in support of his such contention has relied upon **2001 LLR 1, Kumaon Mandal Vikas Nigam Ltd Vs. Girja Shankar Pant & other.**

10. At the very outset, I would like to point out that vide letter dated 26.11.1998, Ex. RC, Shri Yatish Khurana, had been appointed, as an Enquiry Officer, in order to conduct the enquiry, into the charges, levelled against the petitioner (Om Prakash). However, said Mr. Yatish Khurana has not been examined, as witness, by the respondent, in support of its contention that the enquiry against the petitioner had been conducted in accordance with the provisions of the natural justice. I may mention that in this case, the enquiry Officer (Yatish Khurana) was the most material witness because it was he, who could have stated that what procedure he was to follow in order to conduct the enquiry against the petitioner. It is true that the respondent has brought, on record, enquiry proceedings Ex. RD (Ex. RD-1 to Ex. RD-16) while recording the statement of Shri Surinder Singh (RW-1), who stated on the basis of record, brought by him, but I may like to mention that the aforesaid enquiry proceedings cannot be said to have been proved, in accordance with law, for the reason that the respondent did not examine Shri Yatish Khurana (Enquiry Officer) for the reasons best known to it. Even the perusal of the enquiry proceedings goes to show that the petitioner had not been made known that he had the right to get the services of a defence assistant in order to defend himself in the enquiry proceedings. Further, it has been rightly urged by the Ld. AR for the petitioner that the enquiry Officer had not made known to the petitioner as to what procedure, he was to follow while conducting the enquiry. I may also like to observe that no statement of the petitioner had been recorded that he did not choose/opt to get the services of defence assistant despite the fact that in this regard, he had been made known by the Enquiry Officer. Apart from this, there is nothing in the enquiry proceedings that the petitioner had agreed to get conducted the enquiry proceedings in English, which he was able to understand. A challenge has been posed to the enquiry proceedings by the petitioner on the ground that since, he was not knowing the English language, the enquiry proceedings were required to be conducted in Hindi. The petitioner has brought, on record, school leaving certificate Ex. P/2, which goes to show that he had studied upto 3rd class. No counter evidence has been led by the respondent in order to show that the petitioner was qualified enough to know English language. In these circumstances, when from the enquiry proceedings, it is not borne out that the petitioner had been made to know that he could get the assistance of some person of his own choice in order to defend his case, in the enquiry proceedings, and further that it stands proved, on record, that he had studied upto 3rd class, I am of the considered view that a material prejudice has been caused to the petitioner to defend himself in the enquiry proceedings for the reason, that the same were conducted in English. It is further to be noted that from the enquiry proceedings, it is also not highlighted that the copies of the day to day, proceedings, including that of the statement of the witnesses, had been supplied to the petitioner. I may mention that it was obligatory upon the Enquiry Officer to have supplied, to the petitioner, copies of the proceedings. For the failure of the Enquiry Officer to do so, has prejudiced the petitioner in order to defend himself in the enquiry, which was conducted against him. The petitioner (PW-1) has specifically stated that no procedure had been explained to him by the Enquiry Officer. No documents were given to him by the Enquiry Officer. Even the chargesheet was not accompanied by any documents as well as list of witnesses. He was not afforded opportunity to get examined his witnesses and also that he is unable to read the enquiry proceedings, given to him. No proper enquiry had been conducted against him.

11. Ex. PB, is the copy of chargesheet which goes to show that alongwith it, no documents had been supplied to the petitioner, as well as the list of the witnesses of the management. The chargesheet is also not clear, as to who were the persons, who had made a complaint with the management that the petitioner, alongwith Omi Dutt, Lekh Ram & Rajinder, had threatened the labourers of Shri Medh Ram (contractor). Since, the chargesheet had not been accompanied with documents and also the list of witnesses of the management, a prejudice has also been caused to the petitioner, on this score.

12. It is revealed that on behalf of the management S/Shri Ashok Dhiman (MRW-1), Ved Ram (MRW-2), Rajinder Thakur (MRW-3) and Bhim Dutt (MRW-4), had been examined during enquiry proceedings by the management. The perusal of their statements goes to show that the same have been recorded in question and answer form. The petitioner also appears to have cross examined the witnesses in question & answer form. In my view, when the statement, of the witnesses, of the management had been recorded in English and also in question & answer form, the petitioner cannot be said to have been afforded opportunity, as per the principles of natural justice, to cross examine the witnesses, particularly when he was not knowing English language and further that he had no defence assistant, in order to defend himself, in the enquiry proceedings.

13. At this stage, I would also like to point out that from the enquiry proceedings, it is revealed that one Shri S.C Katoh had conducted the enquiry proceedings, on behalf of the management, but on the

record, there is no order which could go to show that he had been appointed as management representative in order to represent the case of the management during the enquiry proceedings. Even, he has not been examined by the respondent, before this Court, for the reasons, best known to it. Had he been examined, it could have been known as to what procedure the Enquiry Officer was to follow in order to conduct the enquiry proceedings and also that whether the petitioner had been made to know about his legal right to take the services of defence assistant, of his own choice, in order to defend his case during the enquiry proceedings. As far as Shri Surinder Singh (RW-1) is concerned, he has stated on the basis of the record, brought by him. From his statement, it is not proved that the Enquiry Officer had made known to the petitioner regarding the procedure to be followed by him to conduct the enquiry and also whether he (Enquiry Officer) had made known to the petitioner to get the services of a defence assistant in order to defend himself in the enquiry proceedings. For the failure of the respondent to have examined Shri Yatish Khurana (Enquiry Officer) & also Shri S.C Katoch, the management representative, I have no hesitation in holding that the respondent has miserably failed to prove that the enquiry had been conducted against the petitioner by following the principles of natural justice and also by affording proper opportunity to the petitioner to defend his case. I am of the view, that there had been total miscarriage of justice when the principles of natural justice were flagrantly violated and there was bias and malice on the part of disciplinary authority. It has been held by Apex Court in *2001 LLR 1, Kumaon Mandal Vikas Nigam Ltd Vs. Girja Shankar Pant & others* that:

“Legality of-dismissal from service of General Manager Tourism- Show cause notice given but copy of documents not given-As a result effective reply explanation could not be given-Enquiry Officer close to and subordinate officer of disciplinary authority-Even presenting officer was not appointed- No chargesheet given-Neither date nor time or place fixed for enquiry-Enquiry Officer submitting report to disciplinary authority-Dismissal from service-Flagrant violation of natural justice- Bias and malice on part of disciplinary authority- Entire chain of events smacks of some personal clash and adaptation of method unknown to law in hottest of haste- Total miscarriage of justice- Dismissal order rightly set aside by High Court”.

14. Ld. Counsel for the respondent has submitted that by recording the statement of the witnesses, in English, no prejudice has been caused to the petitioner and in support of his contention he has relied upon 2009 LLR 30, Shashikant M Sable Vs. Advani Oerlikon Ltd and another. Although, Ld. Counsel has relied upon aforesaid case law but the facts of the present case are different because, in it, the petitioner was being not defended by a person of his choice i.e. defence assistant, whereas in the ruling, cited above, the delinquent was being represented by a friend of his choice and no objection had been raised, when enquiry proceedings were being conducted in English. Consequently, for my above discussion & observations, I hold that the enquiry had not been conducted against the petitioner, in accordance with the principles of natural justice because no proper opportunity of being heard was given to him and for this reason and also there had been no compliance of the provisions of section 25F of the Act, the termination of the services of the petitioner is illegal and unjustified. Thus, my answer to this issue is in “Yes”.

Issue No .1

15. Since, while deciding issue no.3, above, I have already held that the respondent had not conducted fair & proper enquiry against the petitioner by following the principles of natural justice, for this reason, his termination is illegal and unjustified, my answer to this issue is in “Yes”.

Issue No. 2

16. It could not be explained on behalf of the respondent as to why the claim of the petitioner is not maintainable. Moreover, the petitioner has filed his statement of claim consequent upon the reference which has been made to this Court. Thus, for the failure of the respondent to have shown as to why this claim is not maintainable, I hold it to be maintainable and my answer to this issue is in “No”.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed as a result of which the dismissal/termination of the petitioner, from service, vide order dated 19.1.1999, Ex. RH, is set aside and it is ordered that he (petitioner) be reinstated in service with seniority and continuity alongwith full

back wages, from the date of his illegal termination i.e w.e.f. 19.1.1999. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 30th June, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref no. 103 of 2006
Instituted on 3.8.2006.
Decided on. 1.6.2010.

Prem Singh S/o Shri Rati Ram R/o Village Kothi P.O Malath, Tehsil Chopal, District Shimla, HP.
.Petitioner.

VS.

The Divisional Forest Officer, Forest Division Chopal, District Shimla, HP.
.Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.K Khidta, Advocate.
For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Prem Singh s/o Shri Ratti Ram workman by the Divisional Forest Officer, Forest Division, Chopal, District Shimla, Hp w.e.f. 21.7.2001 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper & justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?"

2. In nutshell, the case of the petitioner is that he joined the services as Chowkidar (watch & ward) on 8.11.1999 in the department of the respondent and remained posted as such till 30.6.2000 in Malat Block, Deya Range. On the said date, his services were disengaged on the ground that no work was available with the department. Thereafter, he was provided work against muster roll dated 21.6.2000 in Munalag beat, in Chopal Division where he remained in service till 21.8.2000 on which date he was told that his services were no longer required. By filing O.A no. 3149 of 2000 in the State Tribunal, he challenged his termination and as per order dated 19.3.2001, his termination was quashed with the direction to reengage his services. Pursuant to the orders of State Tribunal, he reported for duties on 28.5.2001. Hardly, he had completed two months when his services were again terminated w.e.f. 21.7.2001, on the ground that the work of plantation was complete. Before, his termination, he had completed 240 days in twelve calendar months. Since, his services were terminated in contravention of the provisions of the section 25F of the Industrial Disputes Act, 1947 (hereinafter referred Act), he deserves to be reinstated in service with all consequential benefits.

3. The claim of the petitioner has been contested on having raised various preliminary objections including maintainability and estoppel. On merits, it has been asserted that the services of the petitioner had been engaged as daily wage worker in order to look after seized property and that the same work was over by 30.6.2000. Since, he had been engaged in order to do casual/temporary work, subject to its availability as well as funds, the services of the petitioner had not been retrenched within the meaning of the Act. It has been denied that the petitioner had remained in job in Munalag Beat from 21.6.2000 as alleged by him. This clearly shows that he has not come before this Court with clean hands. Vide, muster roll no. 37/D 2000-01, he had worked in Jhokar Beat in Deya Range, till the work and funds were available. In fact, his services had been engaged as and when the work was available. Complying with the orders of the State Tribunal dated 19.3.2001, the petitioner was reengaged in different works carried out in Deya Range. In the year, 2001, 2002, 2003 and 2004, he had worked for 136, 141, 90 and 85 days respectively. It is further asserted that as per written application, made to DFO, Chopal dated 20.3.2001, the petitioner insisted that he should be posted in Sainj Beat of Kanda Range. However, his such plea/request could not be accepted as it was against order dated 19.3.2001 of the State Tribunal. The petitioner further insisted that instead of reengaging him for casual work, he should be given a permanent job, which was not possible for the respondent. Further, the petitioner made a representation dated 20.11.2002 to the Hon'ble Chief Minister of Himachal Pradesh that he be engaged as chowkidar in Forest rest house failing which he was to canvass for B.J.P. It is further pleaded that since, the petitioner had insisted to be given permanent job, he abandoned the job on his own. Other allegations denied.

4. By filing rejoinder, the petitioner reaffirmed his own allegations by denying those of the respondent. He further asserted that juniors to him are still in job. In fact, the respondent had engaged daily wage workers on 30.6.2000. It has been denied that he had abandoned the job.

5. Pleadings of the parties gave rise to the following issues which were struck on 6.12.2007.

1. Whether the services of the petitioner have been illegally terminated by respondent w.e.f. 21.7.2001 without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect?
..OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to?
..OPP.
3. Whether the petition is not maintainable in the present form?
..OPR.
4. Whether the forest department is not an industry? If so, its effect?
..OPR.
5. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1	Yes.
Issue No.2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue No.3	No.
Issue No.4	No.
Relief.	Reference answered in favour of the petitioner and against the respondent, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1

8. Admittedly, as per order dated 19.3.2001 of the State Tribunal, the services of the petitioner had been reengaged by the respondent. It has been specifically alleged by the petitioner that after having been reinstated, on the orders of State Tribunal, his services were orally terminated w.e.f. 21.7.2001 in contravention of the provisions of the Act.

9. On the contrary, the defence version is to this effect that the services of the petitioner had been engaged as a casual/temporary worker in order to do works in the department, subject to their availability as well as funds. It has further been asserted that since, the petitioner had insisted to be provided permanent job, he had left the job on his own. At this stage, I would like to make it clear that although, in the claim petition, the petitioner has not taken this plea that juniors to him were retained/engaged in service but in the rejoinder, which he had filed to the reply, this assertion has been specifically made.

10. The petitioner (PW-1) has filed his affidavit Ex. PA in examination in chief wherein he has supported all the material facts on oath. He also stated that Ex. PB and Ex. PC are the copies of judgment dated 19.3.2001 and 30.4.2004 of Administrative Tribunal and that vide letter dated 21.7.2001 (should have been 21.7.2001), his services were terminated.. In the cross- examination, he denied of having been engaged as casual worker but admitted that his services had been, as watch & ward, for the seized timber & plantation work of nursery. He further denied that he had been engaged as per the need of work and that his services stood terminated at the end of work. He admitted that Forest Guard, issued him notice that his services will be reengaged as per the requirement of the work but denied of having made any representation to the Hon'ble Chief Minister vide mark B and further that he had threatened the department that in case he was not posted as Chowkidar, he would canvass for BJP.

11. PW-2, Shri Mohan Lal, states that the petitioner was engaged as daily wage beldar on 4.11.1999 and that he worked till 20.8.2004. Shri Shyam Singh S/o Shri Hari Singh was engaged as daily wage beldar on 10/1999, who is still working with the respondent department. Shri Ratti Ram S/o Shri Bhinder Singh was engaged in December, 1999, who is still working. Ex. PD is the seniority list of the workmen. In the cross-examination, he stated that aforesaid Shyam Singh & Ratti Ram had been engaged in Kanda Range whereas the petitioner in Deya Range of Chopal Division. No junior to the petitioner had been engaged in Deya Range till date.

12. Shri Sant Ram (RW-1), was the Forest Guard of Deya Range, Forest Division, Chopal, in 2001. According to him, the plantation work in his beat had come to an end on 20.7.2001, upon which, he had issued a notice to the petitioner (Prem Singh) on 21.7.2001 to the effect that he would be called as and when the work was available. The notice is Ex. RA, which has been signed by him. In the cross examination, he denied that his notice is illegal and afterthought.

13. Shri Vijay Ram, Deputy Ranger (RW-2) has stated, on the basis of record, that the petitioner was engaged as daily wage worker as watch & ward for seized timber, at Malat Block, in the year, 1999 and that by 30.6.2000, the work was over. As and when the work was available, it was given to the petitioner. The petitioner had never been terminated, after having been reengaged as per order of the State Tribunal. He further stated that the petitioner wanted work as Chowkidar in rest house and also wanted to be reengaged in Sainj Beat, contrary to the orders of the Tribunal. The petitioner had also made representation to the Hon'ble Chief Minister vide mark B, the original record qua which stands destroyed. In the year, 2004, petitioner abandoned the job because he always insisted for permanent work. In the cross examination, he stated that the petitioner had been removed from service vide Ex. RA but admitted that he had not been paid any compensation. Seniority list of the workers is maintained at division level. S/Shri Rati Ram, Shyam Singh and Roshan Lal were engaged on 8.9.2001 in Chopal Division. The department had not given any notice to the petitioner to resume his duties.

14. Although, the contention of the petitioner is to this effect that he had completed 240 days in twelve calendar months preceding his termination but this fact has neither been proved by documentary evidence nor oral. In the reply, the respondent has stated that the petitioner had worked for 136 days in the

year 2001. The reference before this Court is to this effect whether the termination of services of the petitioner w.e.f. 21.7.2001 is proper and justified. This court is required to answer the reference which has been made to it. It is true that the respondent has also pleaded that in the years 2002, 2003 and 2004, the petitioner had worked for 141, 90 and 85 days respectively but this plea cannot be looked into by this Court while answering the reference which has been made to this Court. At this stage, I would like to point out that it was upon the petitioner to have proved with documentary evidence that he had completed 240 days in the twelve calendar months preceding his termination. Since, no such record has been brought, the petitioner fails to prove that his services stood terminated w.e.f. 21.7.2001 without complying with the provisions of section 25F of the Act. The respondent was required to comply with the requirements of section 25F, only, if the petitioner had completed 240 days preceding his termination.

15. Another plea of the petitioner is that his juniors are still in service. From the statement of Vijay Ram (RW-2), it is abundantly clear that Shaym Singh, Ratti Ram and Roshan Lal were engaged on 8.9.2001 in Deya Range of Chopal Division. It is not a disputed fact that the services of the petitioner had not been engaged on 20.3.2001, on the order of the State Tribunal. I may mention that it is also admitted fact that initially, the services of the petitioner had been engaged on 8.11.1999. Since, the persons junior to the petitioner are still in job, definitely, there has been violation of the provisions of section 25G & H of the Act. Ld. Deputy DA has submitted that since, the juniors to the petitioner had been engaged in another range, therefore, the petitioner cannot get any benefit under the provisions of the Act. However, this contention, does not appeal to me because the seniority of the workers is to be determined at the Division level and not at the range level.

16. The respondent has also taken the plea that since the petitioner had been insisting for permanent job, he abandoned the same on his own. In order to prove such assertion, there is no convincing evidence, on record. The Ld. Deputy DA, has also urged that since, the petitioner had made representation to the Hon'ble Chief Minister, he does not deserve to be reengaged in service. However, this contention of Ld. DDA cannot be accepted, because, on the record, it has not been proved that, in fact, any such representation had been made by the petitioner to the Hon'ble Chief Minister. Consequently, for my above discussion, I have no hesitation in holding that the termination of the petitioner w.e.f. 21.7.2001 was illegal and unjust because there has been violation of the provisions of section 25G & H of the Act for the reason that juniors to the petitioner were engaged in job by ignoring his seniority. Accordingly, my answer to this issue is in "Yes".

Issue No. 2

17. Since, the petitioner has failed to prove that he has not been gainfully employed after his termination, I, without hesitation, hold that he is not entitled for back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated, with seniority and continuity in service but without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue no.3.

18. It is not understandable as to why this petition is not maintainable, particularly, when it has been filed in pursuance to the reference made to this Court by the Labour Commissioner. Apart from it, the learned DDA for respondent could not explain as to why this petition is not maintainable. Accordingly by holding it to be maintainable, my answer to this issue is in "No".

Issue No. 4.

19. An objection has been taken by the respondent that the forest department is not an industry but this objection does not hold good in view of the law laid down by the *Constitutional Bench of Hon'ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa* in which it has been held that educational institutions and research centres are Industries. It has further been held that a University is an Industry particularly with respect to small workers like Mali, Chowkidars, Carpenters etc.

and as such on the strength of this judgment, it can be safely concluded that the respondent department is an Industry and governed by the Act, 1947, especially in case of the daily wage workers. Consequently, my answer to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 21.7.2001. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 1st June, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref no. 103 of 2007
Instituted on 24.9.2007.
Decided on. 2.6.2010.

Mansa Ram S/o Shri Hazaru Ram R/o Village Sanahali, P.O Kandhar, Tehsil Arki, District Solan,
HP.

. .Petitioner.

VS.

The Senioir Executive Engineer, electrical Division, HPSEB, Arki.

. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Virender Thakur, Advocate.
For respondent: Shri Bhagwan Chand, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Mansa Ram S/o Shri Hazaru Ram workman by the Senior Executive Engineer, Electrical Division, HPSEB, Arki, District Solan, HP w.e.f. 21.8.1994 without complying the provisions of the Industrial disputes Act, 1947 is proper and justified? If not, what relief of service benefits and the amount of compensation, the above aggrieved workman is entitled to?"

2. Facts, in brief, are that the petitioner had been initially engaged as beldar by the respondent at Darlaghat, Sub Division under the Electricity Division, Arki, District, Solan, w.e.f. 26.3.1982. Thereafter, on 20.2.1995, his services had been terminated, without any compensation and notice. Before, his

termination, he had completed 240 days in a calendar year and that the persons junior to him have been still working. It is further asserted that in the year, 1995, he fell ill and submitted his medical certificate but the respondent did not allow him to work despite various representations. Since, his services had been terminated in violation of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred Act), especially sections 25F & G, he deserve to the reinstated with all consequential benefits.

3. The petition has been contested on having raised preliminary objections including maintainability and that the same is hit by delay & latches. On merits, it has been denied that the services of the petitioner had been terminated on 20.2.1995. It has been admitted that, he had been engaged w.e.f. 26.3.1982 but during the period, in question, he had not been working continuously and for this reason, never completed 240 days in any calendar year including twelve calendar months preceding his alleged termination. As a matter of fact, he had left the job, on his own. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties, gave rise to the following issues, which were struck on 8.7.2009.

1. Whether the termination of services of Shri Mansa Ram petitioner by the Senior Executive Engineer, Electrical Division, HPSEB Arki, District Solan, w.e.f. 21.8.1994 without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged?

. .OPP.

2. If issue no.1 is proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to?

. .OPP.

3. Whether the reference is not maintainable as alleged?

. .OPR.

4. Whether the reference is hit by delay & latches?

. .OPR.

5. Relief.

6. At this stage, it may be pointed that on 2.6.2010, the case was fixed for the evidence of the petitioner but on that date, neither the petitioner appeared nor his counsel. Since, the reference/claim of the petitioner could not have been dismissed in default and that the reference was required to be answered by this Court, the evidence of the petitioner was closed by the order of the Court, who despite having been afforded four opportunities, had failed to lead the same. Since, the petitioner had not led any evidence, there was no need to have given opportunity to the respondent to lead its evidence, particularly, when the issues the onus of which is on the respondent, are legal in nature.

7. Faced with such a situation, I proceed to decide the reference on the basis of the material available on the file.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1	No
Issue No.2	become redundant.
Issue No.3	No.
Relief.	Reference answered against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No .1

9. The assertion of the petitioner is that his services had been terminated, orally on 20.2.1995 without any compensation and notice despite the fact that he had completed 240 days in a calendar year.

10. On the contrary, the respondent has denied that the petitioner had completed 240 days in the twelve calendar months preceding his alleged termination.

11. The petitioner has not brought on record any document, which could go to show that, in the twelve calendar months preceding his termination, he had completed 240 days. At this stage, I would like to point out that the reference, made to this Court, is regarding whether the termination of the services of the petitioner (Mansa Ram) w.e.f. 21.8.1994 is proper and justified. From, this reference, it is highlighted that the services of the petitioner had been terminated w.e.f. 21.8.1994 but in the statement of claim, it has been alleged that his services had been terminated, orally, on 20.2.1995. This shows that the petitioner has not filed, his claim, as per factual position. On the record, the respondent has brought the mandays chart of the petitioner, which goes to show that in the years 1987, 1988, 1989, 1990, 1991, 1992, 1993 and 1994 (Upto 20.8.1994), he had worked for 147, 232, 198, 77, 59, 68, 4 & 9 days respectively. From this document, it is quite apparent that in the twelve calendar months preceding his alleged termination w.e.f. 21.8.1995, he had not completed 240 days. Since, the petitioner on the basis of documentary as well as oral evidence, has miserably failed to prove that he had completed 240 days in the twelve months preceding his termination, which as per reference is w.e.f. 21.8.1994, there was no legal requirement for the respondent to have complied with the provisions of section 25F of the Act.

12. Similarly, the petitioner has neither mentioned in his statement of claim nor brought on record any such document which could go to show as to who are the persons junior to him who have either been engaged, after his alleged termination or are still working. Thus, the violation of the requirements of section 25G & H is also not proved. Consequently, for my above discussions, I hold that the petitioner fails to prove that his alleged termination is illegal and unjust. Accordingly, my answer to this issue is in "No".

Issue No. 2

13. In view of my findings, on issue no.1, above, this issue becomes redundant.

Issue No. 3.

14. For the respondent, it could not be shown as to why this reference is not maintainable. Accordingly, by holding it to be maintainable, my answer to this issue is in "No".

Issue No. 4

15. At the very out set, I would like to point out that the reference is required to be answered by this Court. If there is delay and latches, on the part of the petitioner, on that ground, his claim cannot be rejected/dismissed. The delay & latches can be looked into for granting him back wages. Thus, I hold that this reference is not hit by delay & latches. Accordingly, my answer to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against the petitioner and in favour of respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 2nd June, 2010.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT NALAGARH

Ref No. 107 of 2006.
Instituted on 3.8.2006.
Decided on. 18.6.2010.

Mukesh Kumar C/o Shri Satish Kumar, Branch Secretary, HP AITUC, Head Quarter Near S.B.O.P.,
Baddi, District Solan, HP.

. .Petitioner.

VS.

The Managing Director M/s Saluja Exim Limited, Plot no. 90, Industrial Area Baddi, District Solan.

. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.
For respondent: Shri Rajeev Sharma, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Mukesh Kumar workman by the Managing Director M/s Saluja Exim Ltd. Plot no.90, Industrial Area Baddi, District Solan, HP w.e.f. 18.7.2004 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the above workman is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workmen is entitled to?"

2. Briefly, the case of the petitioner is that he was appointed as Tailor, in the month of May, 2002 by the respondent company and continued as such till 18.7.2004, when he was illegally removed from service, without any cogent reason or justification. Even, for the month of July, 2004, he was not paid his earned wages. His last drawn salary was approximately Rs. 4,500/- per month. It is further averred that he had completed 240 days in each calendar year and also in the twelve calendar months preceding his termination. Apart from this, his juniors have been retained in service. Since, his services were terminated in violation of the provisions of Industrial Disputes Act, 1947 (hereinafter referred Act), he deserves to be reinstated in service with all the consequential benefits.

3. Petition has been contested on having raised various preliminary objections including maintainability and that the petitioner has not come before this court, with clean hands. On merits, it has been asserted that he does not fall in the category of worker as he used to work outside the factory premises, as per his sweet will, on piece rate. Apart from this, there was a simple contract between the parties, as per which, the petitioner was required to stitch the shirts as much as he could have done and the respondent company was to make the payments, accordingly. It has been denied that he had completed 240 days. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues, which were struck on 12.11.2008.

1. Whether the termination of services of Shri Mukesh Kumar workman by the Managing Director M/s Saluja Exim Ltd. Baddi District Solan, HP w.e.f. 18.7.2004 without complying with the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged?

. .OPP.

2. If issue no.1 is proved, to what service benefits and amount of compensation, the aggrieved workman is entitled to? . .OPP.
3. Whether the claim is not maintainable in the present form? . .OPR.
4. Whether the petitioner does not fall under the category of workman as alleged? . .OPR.
5. Whether the petitioner is gainfully employed? If so, its effect? . .OPR.
6. Relief.

6. Before I proceed further, it is worthwhile to point out that the evidence of the petitioner was closed by the order of this Court dated 18.6.2010, for the detailed reasons, narrated therein including that despite having been afforded six opportunities, he had either failed to examine himself or to lead his evidence.

7. I have heard the learned counsels for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1	No.
Issue No.2	Becomes redundant.
Issue No.3	No.
Issue No.4	No.
Issue No.5.	No accordingly.
Relief.	Reference answered in favour of the respondent and against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1.

9. It has been alleged by the petitioner that preceding twelve calendar months from the date of his alleged termination i.e. 18.7.2004, he had completed 240 days. In support of his such assertion, neither any documentary evidence has been brought, on record, nor the petitioner has examined himself. In order to get the benefit of section 25F of the Act, it was obligatory upon the petitioner to have proved that he had completed 240 days in twelve calendar months preceding his termination. Another plea, which has been taken by the petitioner, is that his juniors have been retained by the respondent. To prove this fact, there is also no evidence. Consequently, for the failure of the petitioner to have led evidence to prove that, before his termination, he had completed 240 days and also that juniors to him are still in service and further that his services had been terminated by the respondent on 18.7.2004, in contravention of the provisions of the Act, I have no hesitation in holding that he has failed to prove this issue to which my answer is in "No".

Issue No. 2.

10. In view of my findings, on issue no.1, above, this issue becomes redundant. *Issue No.3*

11. Consequent upon the reference, which has been made to this Court, the petitioner has filed statement of claim. It is not understandable as to why the claim of the petitioner is not maintainable in the present form. Moreover, at the time of arguments, it could not been explained on behalf of the respondent, as to why, the claim of the petitioner is not maintainable. Thus, by holding it to be maintainable, my answer to this issue is in "No".

Issue No. 4

12. Admittedly, the services of the petitioner had been engaged by the respondent to do stitching work. Since, he (petitioner) had been engaged by the respondent to do stitching work, definitely, he falls under the category of workman as per section 2 (s) of the Act. Consequently, I hold that the respondent has failed to prove that the petitioner does not fall under the category of workman and my answer to this issue is in "No".

Issue No. 5

13. When regard is given to the reply, filed by the respondent, it is abundantly clear that there is no such plea, having been taken, that the petitioner is gainfully employed. I may mention that initial onus was upon the petitioner to have proved that he has not been gainfully employed, after his termination. In these circumstances, for want of evidence, I hold that the respondent has not discharged its onus to establish that the petitioner is gainfully employed. Thus, this issue is decided in "No" accordingly.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against the petitioner and in favour of respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 18th June, 2010 in the presence of parties counsels.

By order,

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla
Camp at Nalagarh.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT SOLAN

Ref no. 109 of 2006
Instituted on 3.8.2006.
Decided on. 8.6.2010.

Ram Lal s/o Shri Balak Ram Village Parab, P.O Mahog, Tehsil Theog, District Shimla, HP.

. .Petitioner.

VS.

The Executive Engineer, HPPWD (B&R) Division Theog, District Shimla, HP.

. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.
For respondent: Shri Sandeep Atri, Ld. DDA.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Ram Lal S/o Shri Balak Ram workman by the Executive Engineer, HPPWD (B&R) Division, Theog, District Shimla, HP w.e.f.

6.6.2002 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?"

2. Briefly, the case of the petitioner is that he had been engaged as cleaner by the respondent w.e.f. Jan. 1994 to Jan. 2000. Thereafter, when he obtained the driving licence, he was engaged as driver, against muster roll w.e.f. 26.1.2000 to 31.5.2002. On 5.6.2002, Truck no. HP 09-1090 (hereinafter referred as Truck), on which he had been deployed, met with an accident which resulted in the death of three labourers. Regarding that accident, FIR no. 69/2007 was registered and on its basis, a criminal case was instituted against him in the Court of Ld. JMIC, 1st Class, Theog and that vide order dated 29.4.2004, he was acquitted from the charges. The officers of the PWD also conducted a departmental enquiry against him. In the enquiry report, made by the committee, the accident in question was opined to have occurred due to steering failure. Although, after being acquitted and that the enquiry report was in his favour, he represented to the respondent for reengaging him as daily wage driver but of no avail. Under these circumstances, he deserves to be reinstated w.e.f. 5.6.2002, with full back wages and other consequential benefits.

3. Petition has been contested on having raised various preliminary objections including maintainability. On merits, it has been asserted that the conduct of the petitioner was completely unwarranted which resulted in causing heavy loss to the human life and also to the state exchequer and for this reason, he has no valid ground for reengagement. Other allegations either admitted or denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 18.7.2007.

1. Whether the services of the petitioner were terminated without complying with the provisions of I.D Act, 1947? If so, its effect?
..OPR.

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to?
..OPP.

3. Whether the present petition is not maintainable?
..OPR.

4. Relief.

6. I have heard the Learned AR for petitioner and Learned DDA for respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No.1	Yes.
Issue No.2	Entitled to reinstatement with seniority and continuity but without back wages.
Issue No.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent, as per operative part of award.

REASONS FOR FINDINGS

Issue No. 1

8. Admittedly, the petitioner had initially been appointed as cleaner w.e.f. Jan. 1994 to Jan. 2000 and thereafter, when he obtained the driving licence, his services were engaged as driver w.e.f. 26.1.2000 to 31.5.2002. This fact is also not disputed that on 5.6.2002, the Truck, on which the petitioner was

deployed as driver, met with an accident which resulted in the death of three labourers. The only plea, which has been taken by the respondent, for not reengaging the petitioner as driver is that his conduct was unwarranted which caused heavy loss to human life and state exchequer.

9. While stepping into the witness box as PW-1, the petitioner has supported all the material facts including that he was acquitted by the Court in the criminal case and that in the departmental enquiry, he was exonerated.

10. Shri Pardeep Kumar, PW-3, has proved that Ex. PC is the copy of the judgment passed by the Ld. JMIC, Theog on 29.4.2004, whereby the petitioner was acquitted.

11. Er. Umesh Sharma RW-1, was the member of the enquiry committee which was constituted by the department. His version is to this effect, that the enquiry committee, made a report which is Ex. PB. During investigation, the Police had also procured the report of the mechanic, which is Ex. RC. The committee had come to the opinion that the accident might have occurred due to the steering failure. After the accident, no muster roll was issued in favour of the petitioner. He admitted that XEN PWD, Theog vide letter dated 20.5.2004, recommended for the necessary approval/sanction to reinstate the petitioner.

12. From the evidence, which has been discussed above, it is abundantly clear that the petitioner had completed 240 days in the twelve calendar months preceding his disengagement, on account of the accident, which took place on 5.6.2002. It is further highlighted that since, the petitioner was involved in the accident, in question, no further muster roll was issued in his favour. Ex. PC, copy of the judgment of the Trial Court, goes to show that the petitioner has been acquitted for the commission of offences punishable under sections 279, 337, 338 and 304-A of the IPC in a case was registered against him. Ex. PB is the enquiry report which also goes to show that the accident had occurred due to defect in the steering. From these documents, it is quite clear that the accident, in question, had occurred on account of mechanical defect and not due to the negligence of the petitioner. In these circumstances, his disengagement from service, on account of accident which took place on 5.6.2002, cannot be said to be in compliance to the provisions of the Act, particularly, when it stands proved on record that he had completed 240 days in the twelve calendar months from the date when his services stood disengaged. Definitely, his such termination/disengagement which has been without complying with the provisions of the Act, is illegal and unjust. By holding so, my answer to this issue is in "Yes".

Issue No. 2.

13. Before his (petitioner) termination, he had remained in job, as driver, with the respondent for a short period of about two years. In this way, by giving due regard to this fact and also other circumstances, particularly, that the petitioner has failed to prove that he has not been gainfully employed after his termination, I, without hesitation, hold that he is not entitled for back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated, with seniority and continuity in service but without back wages. Thus, my answer to this issue is in "Yes" accordingly.

Issue No. 3.

14. There is nothing on record which may go to show as to why this petition is not maintainable. Since, pursuance to the reference, made to this Court, the petitioner has filed the statement of claim, the same is held to be maintainable because this court is required to answer the reference. Thus, my answer to this issue is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he (petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his illegal termination i.e. 6.6.2002. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 8th June, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT NAHAN

Ref no. 118 of 2007
Instituted on 4.10.2007.
Decided on. 25.6.2010.

Jitender Singh S/o Shri Mahinder Singh R/o Village Boriwala, P.O Kaulanwala Bhoad, Tehsil Nahan, District Sirmour, HP.

. .Petitioner.

VS.

The Executive Engineer, HPSEB, Division Nahan, District Sirmour, HP.

. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri A.K Gupta, Advocate.

For respondent: Shri Prashant Thakur, Vice Shri Kuldeep Rathore, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the plea of the Executive Engineer, HPSEB, Nahan District Sirmour, HP that Shri Jitender Singh S/o Shri Mahinder Singh daily wage workman had left the job of his own accord after 31.3.1995 due to absenteeism is legal & justified? If not, to what back wages, seniority/service benefits and relief, the concerned workman is entitled to?"

2. Briefly, the case of the petitioner is that he was engaged as daily wage beldar/T-mate in the year 1985 and worked as such upto 31.3.1995, when his services were disengaged by the respondent without any notice and compensation. He had completed 240 days in the previous calendar year and also as per standing orders, the respondent was duty bound to give at least ten days notice to him, which was not given. It is further averred that the respondent has engaged other persons, junior to him, who are still in service. Since, his services were disengaged in contravention of the provisions of the Industrial disputes act, 1947 (hereinafter referred Act), he deserves to be reinstated in service with full back wages, alongwith all consequential benefits.

3. The defence of the respondent was closed as per order dated 29.5.2009.

4. I have heard the learned counsel for parties and have also gone through the record of the case carefully.

5. Although, the contention of the petitioner is to this effect that he had been engaged as beldar/T-mate in the year 1985 but in support of his such plea, he has not filed any documentary proof. Moreover, when his statement is considered, made on oath, before this Court as PW-1, it is highlighted that he was engaged in the month of Jan. 1994 and continued as such till 1995. His such version, in this regard also gets approval from the statement of Shri Susheel Kumar Goel, RW-1, who has proved on record the mandays chart of the petitioner which is Ex. R-1.

6. From the documentary as well as oral evidence, on record, the assertion of the petitioner to have completed 240 days in the preceding twelve calendar months, from the date of his termination, is not proved. Further, the mandays chart Ex. R-1, goes to show that in all, he had worked for 85 days till 31.3.1995. Since, he has failed to prove that before his termination, he had completed 240 days, the respondent was not legally required to have complied with the provisions of section 25F of the Act.

7. It may also be mentioned that as per the reference, the petitioner is alleged to have left the job on his own accord after 31.3.1995. Since, the respondents have not filed reply for the reason that their defence was struck off, as per order dated 29.5.2009, no such defence has come on record. In the absence of such, there is nothing on record to show that the petitioner had abandoned the job on his own. Moreover, in the chief examination of Shri Susheel Kumar (RW-1), nothing such has come that the petitioner had left the job on his own accord. In these circumstances, there is no such material, on record, to substantiate the assertion of the respondents, as is borne out from the reference, that the petitioner had allegedly left the job after 31.3.1995, on his own accord.

8. The another contention of the petitioner is to this effect that after his termination, other persons, who are junior to him, were engaged and that they are still in service. The petitioner (PW-1) has named those persons as S/Shri Satvir Singh, Panna Lal and Prem Pal Singh. In the statement of RW-1 (Susheel Kumar Goel), it has come that, new persons as per their names given in Ex. PR-2, were engaged and that no notice was given to the petitioner. In this way it stands proved on record that after the termination of the petitioner, the respondent has engaged new persons who are still in job. As per the requirement of section 25H, the respondent was required to have given opportunity to the petitioner firstly before engaging the services of other persons as per their names given in Ex. PR-2. For the failure of the respondent to have complied with the provisions of aforesaid section, I have no hesitation in holding that the termination of the petitioner is illegal and unjustified. It has been held by our own Hon'ble High Court in a case titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. that:

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25G & 25H of the Act.”

9. Now, the next question, which arises, is regarding the service benefits for which the petitioner is entitled to. It is true that in the statement of the petitioner (PW-1) it has come that after being removed from service, he is still unemployed but when regard is given to this fact that before his termination, he only worked for 85 days, I am of the view that it is not justified to award him back wages. However, he is held entitled to continuity and seniority in service, from the date, when his services were terminated. Consequently, for my above discussion and findings, this petition is allowed and the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages and as such the reference stands answered in favour of the petitioner and against the respondent accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 26th June, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.
Camp at Nahan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT NAHAN

Ref no. 119 of 2007
Instituted on 4.10.2007.
Decided on. 25.6.2010.

Jai Singh S/o Shri Sher Singh R/o Village Boriwala, P.O Kaulanwala Bhlood, Tehsil Nahan, District Sirmour, HP.

.Petitioner.

VS.

The Executive Engineer, HPSEB, Division Nahan, District Sirmour, HP.

. Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri A.K Gupta, Advocate.
For respondent: Shri Prashant Thakur, Vice Shri Kuldeep Rathore, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

”Whether the plea of the Executive Engineer, HPSEB, Nahan District Sirmour, HP that Shri Jai Singh S/o Shri Sher Singh daily wage workman had left the job of his own accord after 20.1.1995 due to absenteeism is legal & justified? If not, to what back wages, seniority/service benefits and relief, the concerned workman is entitled to?”

2. Briefly, the case of the petitioner is that he was engaged as daily wage beldar/T-mate in the year 1985 and worked as such upto 31.3.1995, when his services were disengaged by the respondent without any notice and compensation. He had completed 240 days in the previous calendar year and also as per standing orders, the respondent was duty bound to give at least ten days notice to him, which was not given. It is further averred that the respondent has engaged other persons, junior to him, who are still in service. Since, his services were disengaged in contravention of the provisions of the Industrial disputes act, 1947 (hereinafter referred Act), he deserves to be reinstated in service with full back wages, alongwith all consequential benefits.

3. The defence of the respondent was closed as per order dated 29.5.2009.

4. I have heard the learned counsel for parties and have also gone through the record of the case carefully.

5. Although, the contention of the petitioner is to this effect that he had been engaged as beldar/T-mate in the year 1985 but in support of his such plea, he has not filed any documentary proof. Moreover, when his statement is considered, made on oath, before this Court as PW-1, it is highlighted that he was engaged in the month of Jan. 1994 and continued as such till 1995. His such version, in this regard also gets approval from the statement of Shri Susheel Kumar Goel, RW-1, who has proved on record the mandays chart of the petitioner which is Ex. R-1.

6. From the documentary as well as oral evidence, on record, the assertion of the petitioner to have completed 240 days in the preceding twelve calendar months, from the date of his termination, is not proved. Further, the mandays chart Ex. R-1, goes to show that in all, he had worked for 85 days till 31.3.1995. Since, he has failed to prove that before his termination, he had completed 240 days, the respondent was not legally required to have complied with the provisions of section 25F of the Act.

7. It may also be mentioned that as per the reference, the petitioner is alleged to have left the job on his own accord after 31.3.1995. Since, the respondents have not filed reply for the reason that their defence was struck off, as per order dated 29.5.2009, no such defence has come on record. In the absence of such, there is nothing on record to show that the petitioner had abandoned the job on his own. Moreover, in the chief examination of Shri Susheel Kumar (RW-1), nothing such has come that the petitioner had left the job on his own accord. In these circumstances, there is no such material, on record, to substantiate the assertion of the respondents, as is borne out from the reference, that the petitioner had allegedly left the job after 31.3.1995, on his own accord.

8. The another contention of the petitioner is to this effect that after his termination, other persons, who are junior to him, were engaged and that they are still in service. The petitioner (PW-1) has named those persons as S/Shri Satvir Singh, Panna Lal and Prem Pal Singh. In the statement of RW-1 (Susheel Kumar Goel), it has come that, new persons as per their names given in Ex. PR-2, were engaged and that no notice was given to the petitioner. In this way it stands proved on record that after the termination of the petitioner, the respondent has engaged new persons who are still in job. As per the requirement of section 25H, the respondent was required to have given opportunity to the petitioner firstly

before engaging the services of other persons as per their names given in Ex. PR-2. For the failure of the respondent to have complied with the provisions of aforesaid section, I have no hesitation in holding that the termination of the petitioner is illegal and unjustified. It has been held by our own Hon'ble High Court in a case titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. that:

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25G & 25H of the Act.”

9. Now, the next question, which arises, is regarding the service benefits for which the petitioner is entitled to. It is true that in the statement of the petitioner (PW-1) it has come that after being removed from service, he is still unemployed but when regard is given to this fact that before his termination, he only worked for 85 days, I am of the view that it is not justified to award him back wages. However, he is held entitled to continuity and seniority in service, from the date, when his services were terminated. Consequently, for my above discussion and findings, this petition is allowed and the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages and as such the reference stands answered in favour of the petitioner and against the respondent accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 26th June, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.
Camp at Nahan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT NAHAN

Ref no. 120 of 2007
Instituted on 4.10.2007.
Decided on. 25.6.2010.

Lal Singh S/o Shri Sher Singh R/o Village Boriwala, P.O Kaulanwala Bhoad, Tehsil Nahan, District Sirmour, HP.

.
Petitioner.

VS.

The Executive Engineer, HPSEB, Division Nahan, District Sirmour, HP.

. Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri A.K Gupta, Advocate.
For respondent: Shri Prashan Thakur, Vice Shri Kuldeep Rathore, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the plea of the Executive Engineer, HPSEB, Nahan District Sirmour, HP that Shri Lal Singh S/o Shri Sher Singh daily wage workman had left the job of his own accord after 20.1.1995 due to absenteeism is legal & justified? If not, to what back wages, seniority/service benefits and relief, the concerned workman is entitled to?”

2. Briefly, the case of the petitioner is that he was engaged as daily wage beldar/T-mate in the year 1985 and worked as such upto 20.1.1995, when his services were disengaged by the respondent without any notice and compensation. He had completed 240 days in the previous calendar year and also as per standing orders, the respondent was duty bound to give at least ten days notice to him, which was not given. It is further averred that the respondent has engaged other persons, junior to him, who are still in service. Since, his services were disengaged in contravention of the provisions of the Industrial disputes act, 1947 (hereinafter referred Act), he deserves to be reinstated in service with full back wages, alongwith all consequential benefits.

3. The defence of the respondent was closed as per order dated 29.5.2009.

4. I have heard the learned counsel for parties and have also gone through the record of the case carefully.

5. Although, the contention of the petitioner is to this effect that he had been engaged as beldar/T-mate in the year 1985 but in support of his such plea, he has not filed any documentary proof. Moreover, when his statement is considered, made on oath, before this Court as PW-1, it is highlighted that he was engaged in the month of Jan. 1994 and continued as such till December, 1995. His such version, in this regard also gets approval from the statement of Shri Susheel Kumar Goel, RW-1, who has proved on record the mandays chart of the petitioner which is Ex. R-1.

6. From the documentary as well as oral evidence, on record, the assertion of the petitioner to have completed 240 days in the preceding twelve calendar months, from the date of his termination, is not proved. Further, the mandays chart Ex. R-1, goes to show that in all, he had worked for 122 days till 20.1.1995. Since, he has failed to prove that before his termination, he had completed 240 days, the respondent was not legally required to have complied with the provisions of section 25F of the Act.

7. It may also be mentioned that as per the reference, the petitioner is alleged to have left the job on his own accord after 20.1.1995. Since, the respondents have not filed reply for the reason that their defence was struck off, as per order dated 29.5.2009, no such defence has come on record. In the absence of such, there is nothing on record to show that the petitioner had abandoned the job on his own. Moreover, in the chief examination of Shri Susheel Kumar (RW-1), nothing such has come that the petitioner had left the job on his own accord. In these circumstances, there is no such material, on record, to substantiate the assertion of the respondents, as is borne out from the reference, that the petitioner had allegedly left the job after 20.1.1995, on his own accord.

8. The another contention of the petitioner is to this effect that after his termination, other persons, who are junior to him, were engaged and that they are still in service. The petitioner (PW-1) has named those persons as S/Shri Satvir Singh, Babu Ram, Mangat Ram and Raghubir Singh. In the statement of RW-1 (Susheel Kumar Goel), it has come that, new persons, were engaged and that no notice was given to the petitioner. In this way it stands proved on record that after the termination of the petitioner, the respondent has engaged new persons who are still in job. As per the requirement of section 25H, the respondent was required to have given opportunity to the petitioner firstly before engaging the services of other persons. For the failure of the respondent to have complied with the provisions of aforesaid section, I have no hesitation in holding that the termination of the petitioner is illegal and unjustified. It has been held by our own Hon^{ble} High Court in a case titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. that:

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25G & 25H of the Act.”

9. Now, the next question, which arises, is regarding the service benefits for which the petitioner is entitled to. It is true that in the statement of the petitioner (PW-1) it has come that after being removed from service, he is still unemployed but when regard is given to this fact that before his termination, he only worked for 122 days, I am of the view that it is not justified to award him back wages. However, he is held entitled to continuity and seniority in service, from the date, when his services were terminated. Consequently, for my above discussion and findings, this petition is allowed and the petitioner is

ordered to be reinstated in service with seniority and continuity but without back wages and as such the reference stands answered in favour of the petitioner and against the respondent accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 25th June, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.
Camp at Nahan.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref no. 135 of 2007
Instituted on 1.11.2007.
Decided on. 1.6.2010.

Ramesh Kumar S/o Shri Albel Singh R/o Village Kotla barog, P.O Bedodevria, Tehsil Pachad, district Sirmour, HP.

. .Petitioner.

VS.

S.N Aggarwal, Occupire, M/s Shri Parwati Steel & Alloys & High Tech. Steel, Kala Amb, District Sirmour, HP.

.Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Chander S. Thakur, Advocate.

For respondent: Already exparte.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-
”Whether the action of M/s Shri Parwati Steel & Alloys & High Tech. Steel, Kala Amb, District Sirmour, HP to terminate the services of Shri Ramesh Kumar S/o Shri Albel Singh workman w.e.f. 30.5.2006 and not to pay him salary for the months of April & May, 2006 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper & justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”
2. Briefly, the case of the petitioner is that he was engaged as Foreman w.e.f. 7th July, 2005 on monthly salary of Rs. 11,000/- + house rent per month by the respondent. He had been working regularly and had completed 240 days in calendar year. However, his services were disengaged w.e.f. 30th May, 2008 without any notice and compensation in violation of the provisions of Industrial Disputes Act, 1947 (hereinafter referred Act). Even, for the months of April & may, 2006 he had not been paid salary and also the house rent @ Rs. 1,000/- per month. Since, his retrenchment was wholly improper and unjustified, he deserves to be reengaged with all consequential benefits.
3. Respondent failed to file reply despite several opportunities and as per order dated 16.1.2010, its defence was struck off and vide order dated 22.4.2010, the respondent was proceeded against ex-parte.

4. Ex-parte arguments heard. Material perused.

5. It has been alleged by the petitioner that before his disengagement/termination, he had completed 240 days in the twelve preceding months. I may observe that since the respondent has failed to file the reply, the assertion of the petitioner, in this regard, goes un-rebutted. Moreover, while appearing in the witness box as PW-1, the petitioner has stated on oath that before his termination, he had completed 240 days and also that juniors to him s/Shri Shalender, Chander etc. are still working with the respondent. Even fresh hands have been engaged by the respondent. He further supports this fact that for the months of April & May, 2006, he had not been paid the salary @ 11,000/- + 1,000 as house rent per month.

6. From the evidence, which has come on record, it stands duly established that in the twelve preceding months from the date of termination, the petitioner had completed 240 days. Thus, was required of the respondent to have complied with the provisions of section 25F of the Act which it has failed to comply with. For this reason, the termination of the petitioner is required to be held as illegal and unjustified. Apart from this, the evidence of the petitioner, that junior to him are still in job, also goes un-challenged including that he has not been paid salary for the months of April & May.

7. Now, next question, which arises, is regarding what service benefits, the petitioner is entitled to. The material on record goes to show that the petitioner, before his termination, had remained in job for about ten months. Keeping in view of his short tenure with the respondent, I am of the considered view that he does not deserve to be granted back wages. However, since his services were terminated, in violation of the provisions of the Act, he is required to be reinstated in service with seniority and continuity from the date of reference i.e 30th October, 2007.

8. Consequently, for my above discussion, the claim of the petitioner is allowed with the result, it is ordered that he be reinstated in service with seniority and continuity, from the date of reference i.e. 30th October, 2007 but without back wages. However, he be paid wages for the months of April & May, 2006 @ Rs. 11,000/- + 1,000/- as house rent per month. Accordingly, the reference is answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 1st July, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref No. 153 of 2002.
Instituted on 29.5.2002.
Decided on 4.6.2010.

Hitender Singh Rathore S/o Shri Durga Singh, R/o Anand Kuteer, Dhalli, Shimla-12, HP.
..Petitioner.

VS.

The Chairman, Managing Committee, Army Training Command, Shimla-3, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri P.P Chauhan, Advocate.

For respondent: Shri Rahul Mahajan, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of the services of Shri Hitender Singh Rathore (Clerk-cum-Auditor) S/o Shri Durga Singh by the Deputy Chairman, Head Quarter, ARTRAC Canteen, Shimla-3 w.e.f. 17.12.1997 after serving one month's notice and then employing the junior workman is proper and justified? If not, what relief of service benefits and compensation, the above workman is entitled to?"

2. Briefly, the facts of the case are that consequent upon the issuance of an advertisement in the Sunday Tribune dated 29th Sep., 1996, the petitioner, having vast experience of typing, both in Hindi and English, forwarded an application dated 30th Sept., 1996 to the Canteen Manager of respondent. On having been subjected to interview, he was selected and issued appointment letter dated 13.3.1997, as per which, he was to enter into a contract within one week of joining. Since, he had no other option, he had to sign the contract on dotted lines. Thereafter, he discharged his duties to the satisfaction of his superiors and successfully completed the probation period of 89 days. It is averred that on 23.8.1997, he was served with a notice of termination of his services, without assigning any reason which was arbitrary, mala fide and in violation of rules, regulations and standing orders, besides violative of articles 14, 16 & 311 of Constitution. In fact, this had been done, with a view to defeat his claim for regularization by giving fictional breaks in service as the vacancy is of permanent nature and still exists. Moreover, some new persons have been appointed and are working on the same post. Feeling aggrieved by said order, he had filed an OA in Central Administrative Tribunal (CAT), which stayed the operation of the impugned order vide order dated 17.9.1997 but the same was not respected by the respondent which resulted in filing of contempt petition. Only thereafter, he was reinstated. On 16.12.1997, said order dated 17.9.1997, was modified with the direction that in case the work was available in the concerned canteen, the petitioner be accommodated, if possible, or retained against any such or equivalent post in preference to any new entrant. On 15.9.1998, the OA was returned to the petitioner for lack of jurisdiction, which resulted in filing of the present petition. It has further been maintained that he (petitioner), had been made to sign the contract on dotted lines, as per the commands of his master, which, alongwith the appointment letter, was not in consonance with the Standing Orders as per which the staff is required to be initially engaged for two years, whereas he had been issued appointment for having been engaged only for one year. Apart from this, the format prescribed for contract, is one sided and thus not valid in the eyes of law. Since, his services had been terminated arbitrarily and in contravention of the provisions of rules, regulations, standing orders and also in violation of the provisions of Constitution and further that juniors to him, have been engaged as well as retained in service, he deserves to be reengaged with all the consequential benefits.

3. Petition has been contested on having raised preliminary objections including maintainability as the appropriate government, in the instant case, is Centre Government whereas the reference has been made by the State Government and further that the reference is bad in law in view of the provisions of section 2(o) (bb) of the Industrial Disputes Act, 1947 (hereinafter referred Act). On merits, it has been asserted that the petitioner, on his own sweet will, had executed a contract of employment in the presence of witnesses, the terms and conditions of which are binding on both the parties. It has been specifically denied that the petitioner had been made to execute the contract under coercion. In case, he had any objection qua the language of contract, he could have objected there and then. Now, he is estopped from taking such pleas. As per the terms and conditions of the contract of employment, the petitioner had been served with notice of termination of his services because the post, on which he was working, had been abolished. Thus, there has been no violation of rules, regulations, principle of natural justice or any of the provisions of Constitution. The action of the respondent management was just & fair, having been taken within the framework of legal and statutory provisions. No fresh appointment has been made against the post on which the petitioner was working because the same stands abolished. It has further been asserted that the petitioner is getting pension and has land holding. Since, the appointment of the petitioner was under the provisions of section 2(o) (bb) of the Act, he cannot claim that his termination/retrenchment is in violation of the provisions of the Act. Other allegations denied.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 30.6.2005

1. Whether the termination of services of petitioner by respondent w.e.f. 17.12.1997 after serving one month's notice and then employing the junior workman is proper and justified?

OPP.

2. If issue no.1 is not proved to what relief of service benefits and amount of compensation, the above workman is entitled to?

OPP.

3. Whether the claim is neither competent nor maintainable as alleged in preliminary objections no. 1, 2 & 4?

OPR.

4. Whether the petitioner is gainfully employed?

OPR.

5. Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 :Decided in yes accordingly.

Issue No.2 :Becomes redundant.

Issue No.3 : No.

Issue No.4 : Yes.

Relief. : Reference answered against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

7. Learned counsel for the petitioner has submitted that as per appointment letter Ex. PB, the appointment of the petitioner was for a period of one year, from the date of joining, but his services were terminated arbitrarily as per termination notice Ex. PD. In this notice, no such reason has been assigned that his services were required to be terminated, after one month, from the date of receipt of this letter/notice, as the post stood abolished. Ld. counsel further submitted that against the post, being held by the petitioner, another person namely T.D Sharma has been appointed who is junior to him (petitioner). By appointing the junior to the post against which the petitioner was working, the stand taken by the respondent, in the reply, that the services of the petitioner had to be dispensed with for the reason that the post stood abolished, becomes false. Another contention, advanced by the Learned counsel is to this effect that since the petitioner had no other option, he had to enter into a contract with the respondent vide Ex. PC. Since, his such act was not voluntary, he cannot be said to be bound by the terms and conditions of the contract. Further, the services of the petitioner could not have been terminated/dispensed with before the expiry of the period of contract, which was for one year.

8. On the other hand, Learned counsel for respondent urged with vehemence that since the appointment of the petitioner was purely on contractual basis and that he had entered into a contract with the respondent vide Ex. PC, his services could have been dispensed with/terminated as per the terms and conditions of the contract. Ld. Counsel further submitted that since the post, on which the petitioner was working, stood abolished, his services were required to be dispensed with as per the terms of the contract. Accordingly, by issuing notice Ex. PD, his (petitioner) services stood dispensed with after one month from the date of receipt of this notice by him. It is within the right of the respondent to create or abolish any post. As far as appointment of juniors to the petitioner, against the post being held by him, is concerned, there is

no such evidence led by the petitioner. Even, in his petition, he has not mentioned the name of any such person who has allegedly joined in place of the petitioner. From the suggestion which has been put to Shri Amar Nath (RW-1), that one Shri T.D Sharma, was appointed in place of the petitioner, it is not proved that said Shri T.D Sharma has in fact been engaged/appointed in place of the petitioner particularly, when this witness has expressed his ignorance regarding the same. Further, the provisions of section 25G & H become inapplicable when the appointment/engagement of a person/workman is as per section 2 (oo) (bb) of the Act.

9. Ex. PA is the copy of application of the petitioner which he had sent/filed in pursuance to advertisement dated 29.6.1996, published in daily Tribune. Ex. PB is the appointment letter dated 13.3.1997, as per which, he had been appointed for the post of clerk-cum-auditor in Canteen Cell, Head Quarter, ARTRAC, Shimla on consolidated pay of Rs. 2664/- per month and that his appointment was purely on contractual basis for a period of one year. As per this letter, he was further required to enter into a contract within one week from his joining and that his appointment was to be governed by the terms and conditions stipulated in the contract.

10. It is true that the Ld. Counsel for the petitioner has urged that there was no other option for the petitioner than to have entered into a contract with the respondent, who was in a dominating position, but this contention does not hold good when regard is given to the appointment letter, Ex. PB wherein it had been made clear to the petitioner that he was required to enter into a contract and further that his appointment was to be governed by its terms and conditions. Had there been no such mention in the appointment letter (Ex. PB) then the submission of the Ld. Counsel could have been forceful.

11. In the statement of the petitioner (PW-1), it has come that on 1.4.1997, when he joined his job, pursuance to appointment letter dated 13.3.1997, he was made to sign an agreement on judicial paper and that at that time, he had no option but to sign the same under compulsion. His such version cannot be believed because on having entered into agreement/contract, Ex. PC, he did not make any such representation to any quarter that under compulsion, he had to enter into the contract. Moreover, no such suggestions were put to Shri Amar Nath (RW-1) & Shri J.R Raghuvanshi (RW-2), on behalf of the petitioner, that he had been made to enter into the contract under compulsion/coercion.

12. According to Shri Amar Nath (RW-1), the services of the petitioner had been terminated as per letter Ex. PD because the post had been abolished. He further made it clear that the appointment of the petitioner, as clerk-cum-auditor, vide Ex. PB, was for a period of one year as per agreement Ex. PC.

13. It is true that in termination letter Ex. PD, it has not been mentioned that the services of the petitioner were being terminated for the reason that the post, which he was holding, stood abolished but in this letter, it has been mentioned that his services were to be terminated as „No longer required“ after one month, from the date of receipt of this letter. At this stage, I would like to point out that the appointment of the petitioner was to be governed as per the terms and conditions of contract/agreement, which he had entered into with the respondent. As per its terms and condition as mentioned as serial no.12, his services could have been terminated by giving one month's notice or surrendering one month's pay in lieu thereof. Thus, as per this condition, the services of the petitioner could have been terminated before the expiry of the contractual period of one year. By invoking this condition, the respondent issued termination letter Ex. PD, dated 23.8.1997 to the petitioner which was issued on 27.8.1997 (afternoon) and that as per this, the services of the petitioner were to stand terminated after one month from the date of receipt of this letter, by him. It is not the case of the petitioner that this letter had not been received by him. It is quite evident, on record that when this letter was received by him, he had filed an OA before the Central Administrative Tribunal (CAT). Moreover, I would like to point out that at serial no.12 of agreement, as mentioned above, there is nothing such which may require that some reasons were required to be assigned before terminating the services of the petitioner. Thus, this termination letter Ex. PD cannot be said to be illegal/arbitrary.

14. In the statement of petitioner (PW-1), it has come that after terminating his services, illegally, w.e.f. 17.9.1997, the respondent also engaged fresh hands and that he was never called back for job. It may be observed that neither in the petition nor in the statement of the petitioner (PW-1), it has come as to who is the person/workman, having been engaged by the respondent on the post being held by him. It was upon the petitioner to have proved this fact by leading satisfactory and convincing oral or documentary evidence. For his failure to do so, it cannot be said to have been proved, on record, from the suggestion made to RW-1 that

one Shri T.D Sharma, has been appointed in place of the petitioner which suggestion he has not admitted. *In AIR 1996 SC 1001, State of Rajyasthan and others Vs. Rameshwar Lal Gehlot*, it has been held by the Hon'ble Supreme Court that when the appointment is for fixed period, it is not covered by section 2(oo) (bb) of the Act and for this reason termination is not retrenchment". By applying the law laid down in the ruling (supra) and also that the services of the petitioner had been terminated as per the terms and conditions of the contract/agreement, entered into by the petitioner with the respondent, as per Ex. RC, his such disengagement cannot be said to be retrenchment within the meaning of section 2(oo) of the Act. *Hon'ble Supreme court in (2006) 2 SCC 794, Haryana State Agricultural Marketing Board Vs. Subhash Chand and another* has held that *if the termination of services does not come within the purview of definition of "retrenchment" under section 2(oo), question of applicability of section 25G does not arise*".

Since, the appointment of the petitioner was purely on contractual basis, as per the terms and conditions, mentioned in agreement/contract Ex. RC, the petitioner cannot get any benefit under the Act.

15. Consequently, for my above discussion, I hold that the services of the petitioner have been terminated/dispensed with properly and justifiably after serving one month's notice as per the terms and condition of contract Ex. PC. As far as, the plea of the petitioner, to this effect that juniors to him have been engaged, the same has not been proved by him and also that such termination fall within the definition of retrenchment as per section 2 (oo) of the Act. Thus, this issue is answered accordingly.

Issue No. 2:

16. Since while deciding issue no.1, I have already held that the services of the petitioner had been terminated legally as per the terms and conditions of the contract/agreement Ex. PC, this issue becomes redundant.

Issue no.3.

17. The main challenge to this petition, for having been not maintainable, is that the reference has not been made by the appropriate government. According to the respondent, the appropriate government, in this case should have been Central Government because the petitioner who had been employed in the Canteen Cell, Head Quarter, ARTRAC, Shimla as clerk-cum-auditor was the central government employee and not of state government. As far as this plea of the respondent is concerned, that does not hold good in view of the law laid down by the *Hon'ble supreme Court in AIR 2010 (SC) 188, R.R Pillai (dead) through LR's Vs. Commanding Officer, HQ SAC (U) and others* wherein an employee of Unit Run Canteen in Armed Forces was held not to be a Government Servant. Since, the profits generated from the URCs are not credited to the consolidated funds, but are distributed to the non public funds which are used by the units for the welfare of the troops. Accordingly, I, hold this petition to be maintainable by rejecting the preliminary objections, taken by the respondent.

Issue No. 4 :

18. The onus to prove this issue is on the respondent. It has been stated by Shri Amar nath (RW-1) that the petitioner, presently is serving in Gaity Theatre, Shimla, after his removal/termination. His such version has gone unchallenged/in-impeached for want of cross examination. This goes to show that the petitioner has not disputed his such version. In his affidavit, Ex. RB, Shri J.R Raghuvanshi (RW-2), has also supported this fact that the petitioner is working in Gaity Theatre, besides being pensioner. It is true that on being cross examined, he has stated that regarding the petitioner, being working in Gaity Theatre, he could not produce any record, today, but further reiterated his version that the petitioner is working there.

19. Petitioner (PW-1) has nowhere stated that he is not gainfully employed. Definitely, it was upon the petitioner to have stated in this regard whether he is gainfully employed or not. Even, in his petition, he has not alleged that he is not gainfully employed. In these circumstances, the evidence of the respondent to this effect that he (petitioner) is working in the Gaity Theatre, Shimla deserves to be believed and relied upon. Accordingly, I hold that the respondent succeeds in proving that the petitioner is gainfully employed. Thus, my answer to this issue is in "Yes".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 4th June, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref No. 158 of 2002.
Instituted on 29.5.2002.
Decided on 4.6.2010.

Shobha Ram S/o Shri Pritam Singh C/o Shri Narinder Singh Guleria, Guleria Cottage, Vikasnagar, Shimla-9, H. P.

..Petitioner.

VS.

The Chairman, Canteen Managing Committee, Head Quarter, Army Training Command, Shimla, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri P.P Chauhan, Advocate.

For respondent: Shri Rahul Mahajan, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of the services of Shri Shobha Singh S/o Shri Pritam Singh w.e.f. 16.3.2000 vide letter dated 15.3.2000 by the Chairman, Canteen Managing Committee, head Quarter, Army Training Command, Shimla-3 is legal and justified? If not, what relief of salary, service benefits and amount of compensation, the above workman is entitled to?"

2. Facts, in brief are that the petitioner was appointed as a helper vide letter dated 30.9.1994 by the respondent for its canteen (hereinafter referred as respondent/canteen). Since, he had served with the best of his capabilities, to the satisfaction of his superiors, he was given promotion w.e.f. 1.1.1999. In fact, his appointment was as per the terms and conditions stipulated in the contract which he was made to enter into with the respondent. Since, he was unemployed youth and was in desperate need of work, he had no other option but to sign on the dotted lines of the agreement/contract. It is further averred that the respondent had resorted to contract appointment instead of initially appointing him (petitioner) on adhoc basis and thereafter on regular basis against a regular post. It is further averred that he had successfully completed 240 days in a given calendar year. On 20.4.2000, all of sudden, he was served with back dated notice, terminating his services, without assigning any reason. The same was arbitrary, illegal and issued in utter violation of rules,

regulations as well articles 14, 16 & 311 of the Constitution of India. With a view to defeat his claim for regularization, the aforesaid order/notice had been issued. Even, persons junior to him, are still working or have been retained by the respondent. It is further asserted that the respondent had not held any domestic enquiry, in consonance with the principles of natural justice, nor any opportunity was afforded to the petitioner to defend himself. He had not made any confessional statement on his own sweet will. In order to cover up the lapse of others, he had been made scapegoat. W.e.f. 3.2.2000 to 29.2.2000, he had been assigned the duties of liquor store and that on 29.2.2000, when the physical store was verified by the Board Officers consisting of the Presiding Officer and other members and also Canteen Manager, the stock was found correct. Thereafter, he handed over the charge to Shri Partap Chand, who also verified the stock before taking over the charge. He was not the Incharge of the store on 14.3.2000 on which date the alleged incident is stated to have come to light, regarding surplus/deficiency in the quantity of liquor. Before taking drastic step of terminating his services, no show cause notice was given to him. Even he was not supplied with the enquiry report before imposing the excessive and harsh penalty, of termination, upon him. Since, the respondent had failed to observe the barest basic principles of natural justice and also that no enquiry report was supplied to him, he deserves to be reinstated in service alongwith the all consequential benefits.

3. Petition has been contested on having raised preliminary objections including maintainability as the appropriate government, in the instant case, is Centre Government whereas the reference has been made by the State Government and further that the reference is bad in law in view of the provisions of section 2(oo) (bb) of the Industrial Disputes Act, 1947 (hereinafter referred Act). On merits, it has been asserted that the appointment of the petitioner was on contractual basis as per the provisions of section 2 (oo) (bb) of the Act. As far as signing of contract is concerned, the petitioner had signed it wilfully in the presence of the witnesses. It has further been maintained that during routine checkup of the stock, a case of liquor was found unaccounted for whereas on 28.2.2000, there was no discrepancy. The matter in this regard was reported to the Chairman, Managing Committee on 14.3.2000 and the Manager of ARTRAC was ordered to investigate the facts and circumstances of the matter by the Chairman. Consequently, the Manager Canteen had given show cause notice to three persons S/Shri Pratap Chand, Ghanshyam and Shobha Singh (Petitioner) under his signatures vide letter dated 14.3.2000, directing them to submit their explanation. The signatures of all the aforesaid three persons had been obtained on the office copy. On 13.3.2000, their explanations were received, in their own hand. It has been further asserted that the petitioner had replied the show cause notice on the same day i.e. 14.3.2000 and not on 14.5.2000. Since, he had admitted his guilt, his services were terminated vide letter dated 15.3.2000 after having conducted just and fair enquiry. When the petitioner had confessed his guilt/lapse, it cannot be said that the respondent did not conduct fair and proper domestic enquiry against him before taking final action. It has been denied that the termination order of he petitioner was back dated. In his letter/confession, the petitioner has wrongly mentioned the date as 14.5.2000 instead of 14.3.2000 which was not noticed by the officer concerned due to oversight. Thus, his date of termination is correct and that no document is back dated. The petitioner had purposely played a gimmick by writing the date as 14.5.2000 in place of 14.3.2000 in his reply/confession which could not be noticed by the concerned officer due to oversight. It is denied that juniors to the petitioner have been employed. Other allegations denied.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 30.6.2005

1. Whether the termination of services of petitioner w.e.f. 16.3.2000 vide letter dated 15.3.2000 by the Chairman Canteen managing Committee, Head Quarter Army Training Command Shimla-3 is legal and justified?

OPP.

2. If issue no.1 is not proved to what relief of service benefits and amount of compensation, the above workman is entitled to?

OPP.

3. Whether the claim is neither competent nor maintainable as alleged in preliminary objections no. 1, 2 & 4?

OPR.

4. Whether the petitioner is gainfully employed?

OPR.

5. Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 : Decided in yes accordingly.

Issue No. 2 : Becomes redundant.

Issue No. 3 : No.

Issue No. 4 : No.

Relief. : Reference answered against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

7. Learned counsel for the petitioner has submitted that without following the principles of natural justice and holding domestic enquiry, the services of the petitioner were terminated vide letter dated 15.3.2000 despite the fact that he had been discharging his duties faithfully, to the entire satisfaction of his officers. For this reason, his services were being extended from time to time. Ld. Counsel further submitted that at the relevant time, when one case of liquor was recovered, which had been kept in hiding, at that time, the petitioner was not the Incharge of liquor store. In fact, he had remained as such w.e.f. 3.2.2000 to 29.2.2000. In the physical store verification, which had been carried out on 29.2.2000, the stock had been found to be correct. In case, any such case of liquor had been found hidden, the same could not have been attributed to the petitioner particularly, when, at the relevant time, he was not the Incharge of liquor store. Further, if the respondent was required to take such a drastic action, against the petitioner, by way of terminating his services, it was required that a domestic enquiry was to be conducted and that he (petitioner) should have been given ample opportunity to defend himself. Without holding any such enquiry, the services of the petitioner were terminated in utter violation of the principle of natural justice, Ld. Counsel submitted. The alleged confession has not been proved and if the same is relied upon, from it, it is quite evident that the same was made in reference to letter dated 14th May, 2000. If this reply of the petitioner is acted upon, then it is quite evident that termination order dated 15.3.2000 is back dated.

8. On the other hand, Learned counsel for respondent urged with vehemence that the appointment of the petitioner was purely on contractual basis, from year to year, and that the same was governed by the terms and conditions, mentioned in the contract, which the petitioner had entered into with the respondent. As per condition no.8 of the contract, the respondent was empowered to summarily terminate the contract for any misconduct committed during service by the petitioner after instituting departmental enquiry and as per condition no.9, in case of moral turpitude or misappropriation of accounts, the respondent was empowered to terminate the contract of the petitioner, finally. Since, the appointment of the petitioner had been governed as per the terms and conditions of the contract, vide Ex. RN, which he had entered into with the respondent, his termination on the ground of having committed moral turpitude, on account of aforesaid act, is proper, legal and justified, particularly, when he (petitioner) had been issued show cause notice dated 14.3.2000 vide Ex. RB, to explain his conduct and in pursuance thereof, in the reply, which was filed by him (petitioner), he had confessed his guilt. There could have been need for further enquiry/investigation in case, the petitioner had not confessed his guilt. Ld. Counsel further urged that in his reply/confession letter Ex. RC, the petitioner has wrongly mentioned the date as 14.5.2000 instead of 14.3.2000, of the letter in respect of which he had been submitted his reply/explanation. In this way, on having afforded proper opportunity to the petitioner, his services were terminated vide letter dated 15.3.2000, for having committed misappropriation and criminal breach of trust.

9. It is not a disputed fact that the services of the petitioner were on contract basis and that he had entered into contract/contracts with the respondent and that the last contract, which was entered into by

him is Ex. PN. It is true that a plea has been taken by the petitioner that since he was unemployed and in need of job, he had no other option but to enter into contract with the respondent, who was in a dominating position but this plea does not hold good particularly when this fact is considered that for getting his initial appointment dated 30.9.1994 extended, he had been requested the respondent from time to time. In case, at any time, he had thought that the terms and conditions of the contract were not acceptable to him, he was not to request the respondent, for the extension of his contract/service. One of his such request, seeking extension of services is Ex. RO.

10. In his statement, the petitioner (PW-1), has supported the material facts as stated in the petition including that on 13.3.2000, when he was told that the stock in the store was surplus, he was made to sign some blank papers. He further testified to this effect that no enquiry had been conducted against him and that without doing so, his services were illegally terminated w.e.f.16.3.2000. He was not having the charge of salesman which he had handed over on 29.2.2000 to Shri Pratap Singh. In the cross examination, he has admitted of having received some communication on 14.3.2000 and also signing the same. He denied that a case of liquor had been kept hidden by him, behind the door, underneath the case of Highland scotch whiskey and that he had been issued a show cause notice in this regard. He further denied of having admitted his guilt but admitted that the contract had been signed by him in the presence of witnesses, on his own sweet will.

11. From the statement of the petitioner (PW-1), it is highlighted that on 44.3.2000, he had received some communications, which was also signed by him. When regard is given to the statement of Major J.R Raghuvanshi (RW-1), it comes to the light that vide authority letter Ex. RB, he has been authorized by the competent authority to make statement and that Ex. RA is his affidavit, in evidence. According to him, Ex. RC is the termination letter dated 15.3.2000 of the petitioner, Ex. RD is the investigation report and Ex. RE is the reply, filed by the petitioner to explanation letter dated 14.3.2000, which is Ex. RH. The replies which had been filed by S/Shri Ghanshyam & Pratap Singh to the explanation letter dated 14.3.2000 are Ex. RF & Ex. RG. In the cross examination, he stated that the confessional statement, made by the petitioner, which is Ex. RE is correct as per original and that in it, the date has been mentioned as 14th May, 2000. He cannot say in whose handwriting the confession is but denied that it has not been in the handwriting of the petitioner. Only investigation was done in this case and no enquiry was conducted. When the bottles were found in the CSD store, Pratap and Ghyanshyam were the incharge of the store. He admitted that they had taken the charge of the store about 13 days prior when the bottles were found. The copy of investigation, Ex. RD was not given to the petitioner.

12. From the statement of Major J.R Raghuvanshi (RW-1), it is quite clear that vide letter dated 14.3.2000, the explanations of Shri Ghanshyam, Pratap Chand and the petitioner had been called for and that they replied the same. The perusal of explanation Ex. RB dated 14.3.2000 goes to show that it bears the signatures of the aforesaid, including the petitioner. I may reiterate that even the petitioner (PW-1) has admitted this fact that on 14.3.2000, he had received some communication which was also signed by him. Thus, it stands duly proved, on record, that explanation, copy of which is Ex. RB dated 14.3.2000, had been duly served upon the petitioner. Ex. RE is the alleged reply of the petitioner which he had filed to the explanation and as per which, he confessed his guilt. The perusal of this reply goes to show that it has been made in reference to letter no. ARTRAC/Canteen-2000 dated 14th May, 2000 but on this score, it cannot be said that the termination order of the petitioner vide letter dated 15.3.2000 is back dated. It is to be noted that the petitioner has not brought on record any such letter dated 11.5.2000 which had been received by him. In his statement, before this court as PW-1, he has also not specifically stated that he had not received explanation dated 14.3.2000 and that to the same he had not filed any reply. His version is further silent to the effect that to letter dated 11.5.2000, he had filed the reply and not to letter dated 14.3.2000. In the replies, Ex. RF & Ex. RG, S/Shri Ghyanshyam and Pratap Chand have specifically made the reference of letter dated ARTRAC/Canteen-2000 dated 14th March, 2000. Thus, from the evidence, on record, it stands duly proved that the replies had been filed by the petitioner as well as Pratap Chand & Ghyanshyam to the letter of explanation dated 14.3.2000, copy of which is Ex. RB. By writing the wrong date in reply Ex. RE as 14th May, 2000 instead of 14.3.2000, the petitioner has failed to prove that he had not been served with explanation letter dated 14.3.2000 and that in reference to the same, he had not filed his reply. In my considered view, there are no reasons to disbelieve the version of the respondent that in pursuance of the explanation dated 14.3.2000, the petitioner had filed reply wherein, he had confessed his guilt.

13. It is true that Ld. Counsel for the petitioner has submitted that no domestic enquiry was conducted against the petitioner before terminating his services and also that he had not been supplied with the copy of investigation report but when regard is given to this fact that the petitioner had admitted his guilt, there was no need for having ordered to conduct enquiry against the petitioner to prove his guilt. Had the petitioner not confessed his guilt, then this contention of Ld. Counsel could have been very forceful. At this stage, I may mention that the appointment/service of the petitioner is governed by the terms and conditions as mentioned in the contract, Ex. RN, which he had entered into with the respondent. One of the conditions of this contract is that, in case of moral turpitude, the respondent was empowered to terminate the contract of the petitioner finally. Since, by making false bills, the petitioner had managed to spare the liquor, which he had kept behind the door underneath of the case of highland scotch whiskey, he had definitely indulged in illegal activities which amounted to misappropriation of liquor of the canteen store. On account of his such act, the respondent lost faith in him and terminated his services as per the terms and conditions of the contract because his such act constituted a moral turpitude. Further, regarding his such act, he had made a confession, vide Ex. RE. I am in agreement with the contention of the Ld. Counsel for the respondent that it is not the financial loss which is to be considered but it is the loss of confidence. *It has been held by Hon'ble Apex Court in (2005) 3 SCC 254, Divisional Controller, KSRTC (NWKRTC) Vs. A.T Mane.* In para nos. 12 & 13 which are reproduced as under:

12. "Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating corporation's fund, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal".

13. "This Court in the case of B.S. Hullikatti (supra) held in a similar circumstances that the act was either dishonest or was so grossly negligent that the respondent therein was not fit to be retained as a conductor. It also held that in such cases there is no place for generosity or misplaced sympathy on the part of the judicial forums and thereby interfere with the quantum of punishment".

14. In the reply, filed by the respondent, it has also come that on hearing, that his services had been terminated vide letter dated 15.3.2000, the petitioner absconded and could not be traced and for this reason, the order of termination had to be sent through registered post dated 30.3.2000 at his village address. The perusal of investigation report Ex. RD, shows that it is dated 15.3.2000. When the petitioner had allegedly absconded, on having heard regarding his termination on 15.3.2000, there was also no occasion for the respondent to have made available to him the investigation report Ex. RD. Further, the supply of this report to the petitioner could have been relevant, in case, he had not confessed his guilt and that after domestic enquiry, his such guilt was required to be proved. In this way, on account of non supply of the investigation report, Ex. RD to the petitioner, no illegality has been committed by the respondent and that on this account it cannot be said that the principles of natural justice have not been complied with. By disagreeing with the Ld. Counsel for the petitioner, I subscribe to the contention of Ld. Counsel for the respondent that the services of the petitioner have been terminated, legally and validly vide letter dated 15.3.2000 w.e.f. 16.3.2000. Consequently, my answer to this issue is in "Yes".

Issue No. 2:

15. While deciding issue no.1, I have already held that the services of the petitioner have been terminated legally as per the terms and conditions of the contract/agreement Ex. PN, this becomes redundant.

Issue No.3.

16. The main challenge to this petition, having been not maintainable is that the reference has not been made by appropriate government. According to the respondent, the appropriate government, in this case should have been Central Government because the petitioner who had been employed in the Canteen Cell, Head Quarter, ARTRAC, Shimla as clerk-cum-auditor was the center government employee and was not state government. As far as this plea of the respondent is concerned, that does not hold good in view of the law laid down by the *Hon'ble supreme Court in AIR 2010 (SC) 188, R.R Pillai (dead) through LR's Vs.*

Commanding Officer, HQ SAC (U) and others wherein an employee of Unit Run Canteen in Armed Forces was held not to be a Government Servant. Since, the profits generated from the URCs are not credited to the consolidated funds, but are distributed to the non public funds which are used by the units for the welfare of the troops. Accordingly, I, hold this petition to be maintainable by rejecting the preliminary objections, taken by the respondent.

Issue No. 4 :

17. The onus to prove this issue is on the respondent. When regard is given to the statement of Major Raghuvanshi (RW-1) and also his affidavit Ex. RA, nothing such has come, on record, which could show that the petitioner is gainfully employed. Undoubtedly, in his version, the petitioner (PW-1), has also not stated that he is not gainfully employed but in the cross examination, a suggestion, to this effect has been put to him, that he is gainfully employed. This suggestion has been denied by him. There is also no documentary proof, on record, which could go to show that the petitioner is gainfully employed. In such circumstances, when the respondent has not led any evidence to prove that the petitioner is gainfully employed, I have been left with no other option but to hold that the respondent has failed to prove this issue to which my answer is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 4th June, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT NALAGARH

Ref No. 158 of 2006.
Instituted on 18.11.2006.
Decided on. 18.6.2010.

Mohd. Asfar s/o Shri Mohd. Habiburrehman C/o Shir Satish Kumar, Branch Secretary, HP AITUC,
Head Quarter Near S.B.O.P., Baddi, District Solan, HP.

..Petitioner.

VS.

The Managing Director M/s Saluja Exim Limited, Plot no. 90, Industrial Area Baddi, District Solan.
..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Shri Rajeev Sharma, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Mohd. Asfar s/o Shri Mohd. Habiburrehman workman by the Managing Director M/s Saluja Exim Ltd. Plot no.90, Industrial Area Baddi, District Solan, HP w.e.f. 18.7.2004 without complying the provisions of the

Industrial Disputes Act, 1947 as alleged by the above workman is legal and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workmen is entitled to?"

2. Briefly, the case of the petitioner is that he was appointed as Tailor, in the month of May, 2002 by the respondent company and continued as such till 18.7.2004, when he was illegally removed from service, without any cogent reason or justification. Even, for the month of July, 2004, he was not paid his earned wages. His last drawn salary was approximately Rs. 4,500/- per month. It is further averred that he had completed 240 days in each calendar year and also in the twelve calendar months preceding his termination. Apart from this, his juniors have been retained in service. Since, his services were terminated in violation of the provisions of Industrial Disputes Act, 1947 (hereinafter referred Act), he deserves to be reinstated in service with all the consequential benefits.

3. Petition has been contested on having raised various preliminary objections including maintainability and that the petitioner has not come before this court, with clean hands. On merits, it has been asserted that he does not fall in the category of worker as he used to work some-times inside the factory premises as well as outside, as per his sweet will, on piece rate. Apart from this, there was a simple contract between the parties, as per which, the petitioner was required to stitch the shirts as much as he could have done and the respondent company was to make the payments, accordingly. It has been denied that he had completed 240 days. Other allegations denied.

5. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

6. Pleadings of the parties gave rise to the following issues, which were struck on 12.11.2008.

1. Whether the termination of services of Shri Mohd. Asfar workman by the Managing Director M/s Saluja Exim Ltd. Baddi District Solan, HP w.e.f. 18.7.2004 without complying with the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged?

OPP.

2. If issue no.1 is proved, to what service benefits and amount of compensation, the aggrieved workman is entitled to?

OPP.

3. Whether the claim is not maintainable in the present form?

OPR.

4. Whether the petitioner does not fall under the category of workman as alleged?

OPR.

5. Whether the petitioner is gainfully employed? If so, its effect?

OPR.

6. Relief.

7. Before I proceed further, it is worthwhile to point out that the evidence of the petitioner was closed by the order of this Court dated 18.6.2010, for the detailed reasons, narrated therein including that despite having been afforded six opportunities, he had either failed to examine himself or to lead his evidence.

8. I have heard the learned counsels for the parties and have also gone through the record of the case carefully.

9. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No. 1 :	No.
Issue No. 2 :	Becomes redundant.
Issue No. 3 :	No.
Issue No. 4 :	No.
Issue No. 5 :	No accordingly.
Relief. :	Reference answered in favour of the respondent and against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

10. It has been alleged by the petitioner that preceding twelve calendar months from the date of his alleged termination i.e. 18.7.2004, he had completed 240 days. In support of his such assertion, neither any documentary evidence has been brought, on record, nor the petitioner has examined himself. In order to get the benefit of section 25F of the Act, it was obligatory upon the petitioner to have proved that he had completed 240 days in twelve calendar months preceding his termination. Another plea, which has been taken by the petitioner, is that his juniors have been retained by the respondent. To prove this fact, there is also no evidence. Consequently, for the failure of the petitioner to have led evidence to prove that, before his termination, he had completed 240 days and also that juniors to him are still in service and further that his services had been terminated by the respondent on 18.7.2004, in contravention of the provisions of the Act, I have no hesitation in holding that he has failed to prove this issue to which my answer is in "No".

Issue No. 2:

11. In view of my findings, on issue no.1, above, this issue becomes redundant. *Issue no.3*

12. Consequent upon the reference, which has been made to this Court, the petitioner has filed statement of claim. It is not understandable as to why the claim of the petitioner is not maintainable in the present form. Moreover, at the time of arguments, it could not been explained on behalf of the respondent, as to why, the claim of the petitioner is not maintainable. Thus, by holding it to be maintainable, my answer to this issue is in "No".

Issue No. 4 :

13. Admittedly, the services of the petitioner had been engaged by the respondent to do stitching work. Since, he (petitioner) had been engaged by the respondent to do stitching work, definitely, he falls under the category of workman as per section 2 (s) of the Act. Consequently, I hold that the respondent has failed to prove that the petitioner does not fall under the category of workman and my answer to this issue is in "No".

Issue No. 5 :

14. When regard is given to the reply, filed by the respondent, it is abundantly clear that there is no such plea, having been taken, that the petitioner is gainfully employed. I may mention that initial onus was upon the petitioner to have proved that he has not been gainfully employed, after his termination. In these circumstances, for want of evidence, I hold that the respondent has not discharged its onus to establish that the petitioner is gainfully employed. Thus, this issue is decided in "No" accordingly.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against the petitioner and in favour of respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 18th June, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla
Camp at Nalagarh.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref No. 159 1999.
Instituted on 28.9.1999.
Decided on. 21.6.2010.

Tek Chand S/o Shri Narayan Dutt Attri R/o Village Bandani, P.O Jabli, District Solan, H.P.

..Petitioner.

VS.

M/s, Cosmo Ferrities Ltd. Village Sidla, P.O Jabli, District solan, H.P.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Id. AR.

For respondent: Shri Rahul Mahajan, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

“Whether the termination of services of Shri Tek Chand daily wager helper by the management of M/s, Cosmo Ferrities Ltd. Village Sidla, P.O Jabli, District solan, HP w.e.f. 18.3.1997, on completion of 240 days continuous service without any notice, charge sheet, enquiry and without complying with the provisions of section 25F of the Industrial disputes Act, 1947 and also retaining junior workers in service without following the principles of last come first go is legal and justified? If not to what relief of consequential service benefits and amount of compensation, Shri Tek Chand is entitled to?”

“Whether Shri Tek Chand has abandoned the services, on his own, as alleged? If not, to what effect?”

2. In nutshell, the case of the petitioner is that he had been employed/engaged by the respondent company in the month of October, 1992 and remained in its employment till 18.3.1997 when his services were illegally terminated/removed without assigning any reason. In each year, he had completed 240 days. From, the date of his termination, he has been unemployed. Since, his services had been terminated without notice and in contravention of the mandatory provisions of section 25N of the Industrial Disputes Act, 1947 (hereinafter referred Act), the same is illegal, null & void. Further, his such termination/removal is also in violation of section 25G of the Act because juniors to him have been retained in employment. It has further been averred that before terminating his services, no show cause notice or warning had been issued to him. Since, his services were terminated in contravention of he provisions of the Act, he deserves to be reinstated in service with all the consequential benefits.

3. The claim of the petitioner has been contested on having raised various preliminary objections including maintainability and estoppel. On merits, it has been asserted that for the first time, the petitioner had been employed in the month of July, 1993 on temporary/casual basis for a short period in order to meet the volume of work. In the month of March/April, he was again appointed to meet the demand of excess work load in the factory. Subsequently, when the work load got reduced, the workforce was also reduced by following the provisions of the Act. It is further pleaded that again, the petitioner was employed through a contractor, on 1.2.1995, and worked intermittently for a short period of two years. His services had never been dispensed with by the management. On the contrary, he had voluntarily, on his own, left the company on 17.3.1997, after full & final settlement for better employment. Since, he had applied for experience certificate, in order to get better employment, he had been issued a certificate dated 21.4.1997. From the

language of the letter, vide which, he had applied for the experience certificate, it is quite clear that he had received full & final settlement and left the job for better prospects. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 13.3.2001.

1. Whether the termination of services of the petitioner is in violation of section 25F, 25G of the Industrial Disputes Act, as alleged?

OPP.

2. Whether the petitioner had abandoned the job himself?

OPR.

3. Relief.

6. I have heard the learned AR for the petitioner and Ld. Counsel for the respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No. : 1 No.

Issue No. : 2 Yes.

Relief : Reference answered against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

8. Ld. AR for the petitioner has submitted with vehemence that even the respondent, in its reply, has admitted this fact that for the first time the petitioner had been employed/engaged with the respondent company in the month of July, 1993 and that he left the company on 17.3.1997. Although, the plea of the respondent is to this effect that the services of the petitioner had been engaged in the month of July, 1993 and subsequently, in the month of March/April, 1994, on temporary and casual basis but such plea cannot be believed on the face of documents mark A and mark B which go to show that he (petitioner) had been engaged in the grinding section of the factory, which work is of permanent nature, as stated by Shri S.C Katoch (RW-2). Ld. AR further urged that the petitioner has specifically stated that he had been employed/engaged in the month of October, 1992 and remained in the continuous employment with the respondent till 18.3.1997. This fact has been supported by the petitioner while appearing in the witness box as PW-1. Thus, it is duly proved, on record, that he had completed 240 days in each calendar year including twelve calendar months preceding his termination. Ld. AR further submitted that it also stands proved that juniors to the petitioner have been retained/engaged. Since, his services had been terminated in contravention of the provisions of the Act, he deserves to be reinstated with all the consequential benefits including full back wages.

9. The another limb of the arguments of the Ld. AR for petitioner is to this effect that if, it is admitted that w.e.f. 1.2.1995, the services of the petitioner had been taken by the respondent company through a contractor, even then the respondent cannot escape its liability because he will be deemed to be the worker of the respondent company for the simple reason that such alleged contract between the respondent and contractor is sham and camouflage. Ld. AR further pointed out that even the alleged contractor was not having any licence, as admitted by Shri D.S Panu (RW-1), who has been examined by the respondent company as its witness. Moreover, since the work (grinding) for which the services of the petitioner had been engaged was of permanent nature, he cannot have been engaged through contractor for doing such work in contravention of the provisions of the Contract Labour (Regulation & Abolition) Act, 1970. Ld. AR further urged that it has not been proved, on record, that the petitioner had left the job, on his own, after taking full & final settlement.

10. On the other hand, it has been contended on behalf of the respondent that from the statement of Shri D.S Panu (RW-1), it is duly proved that the petitioner had been engaged by M/s Liasion and allied services, a labour contractor, which had an agreement with the respondent company and that as per the agreement, the services of the petitioner, as a helper, were made available to the respondent company w.e.f. 1.2.1995. Ld. Counsel further urged that from the documentary as well as oral evidence, it stands proved that in order to have better job prospects, the petitioner had left the job, on his own, by receiving full & final settlement from the contractor. Ld. Counsel also submitted that initially, the services of the petitioner had been engaged by the respondent company in the month of July, 1993 and also March/April, 1994 but such engagement of his services were for temporary and casual basis. Since, the petitioner, when he left the job, on his own, was not in the employment of the respondent company and also that the petitioner has failed to prove that he had completed 240 days in the twelve calendar months preceding his alleged termination, there is no violation of section 25N of the Act. Further, it has not been proved that there is any contravention of section 25G & H of the Act for the simple reason that the petitioner was not in the employment of respondent company, when, he abandoned the job. Ld. Counsel further contended that there has been a contract between the respondent company and M/s Chandigarh liaison Allied services (contractor) in respect of which the respondent company has also got itself registered under sub section 2 of section 7 of the Contract Labour (Regulation & Abolition) Act, 1970 and in this regard a certificate had been issued. When the respondent company was having a certificate of registration, it cannot be said that its contract/agreement with the contractor was sham and camouflage one.

11. At the very out set, I would like to point out that the petitioner has not impleaded M/s Chandigarh liaison Allied services (*hereinafter referred as Allied Service/Contractor*) as a party in the statement of claim which has filed, consequent upon the reference having been made to this Court by the appropriate government. The respondent company has taken a specific plea that on 1.2.1995, the petitioner had been engaged through a contractor. A copy of the bio-data, of the petitioner, Ex. RW-1/B has also been brought, on record, in order to show that for employment, as helper, he had applied to the Allied Services and as per this letter, he had been recruited for the post of helper w.e.f. 1.2.1995 and posted with the respondent company. Since, the respondent company, through its reply, had made known to the petitioner that his services had been engaged by a contractor and in support thereof, the documents were also filed, it was required of the petitioner to have taken necessary steps to get impleaded Allied Services/Contractor as a party in this case even if, initially, he had filed his claim only against the respondent company.

12. Shri D.S Sandu (RW-1), is the director of the Allied Services, who has stated from the record that with the respondent company, they have an agreement, the photocopy of which is Ex. RW-1/A. He specifically stated that the petitioner had applied to the Allied Services for appointment, on 1.2.1995, as per Ex. RW-1/B. Ex. RW-1/C is the abstract (75 sheets) of adult workers registers being maintained by them and that in the same, the name of the petitioner has been recorded at serial no.8. The Labour Commissioner has also checked the register. They also maintain the EPF of the workmen and that the copy of the same is Ex. RW-1/D. Account no., issued by the EPF authority, for the year, 1996-97 is Ex. RW-1/E. They also maintain the salary register and that Ex. RW-1/F (23 sheets) is the abstract of the same. Ex. RW-1/G (21 sheets) is the abstract of attendance register. The petitioner had been deputed with the respondent company but he stopped turning, after 17.3.1997, on his own.

13. The aforesaid documents, which have been brought, on record, clearly goes to show that vide Ex. RW-1/B, the petitioner had applied to Allied Service for employment and on 1.2.1995, he had joined as helper and his services were deputed with the respondent company. On the contrary, although, in the statement of petitioner (PW-1), it has come that he had joined with the respondent company, in the month of October, 1992, as helper, in grinding section, and worked till 18.3.1997, when his services were terminated without notice and compensation, but in support of his such version, he has not produced any document which could go to show that in fact, he had been engaged/appointed by the respondent company. Even, he has not brought, on record, any such document which could go to show that he was being paid salary by the respondent company in which, he was also marking his attendance. In case, he had actually been engaged by the respondent company from October, 1992 till 18.3.1997, he could have caused to get produced record, in this respect, from the respondent company, such as attendance & salary registers and also record pertaining to his EPF. In the absence of such documentary proof, his plea to have remained in continuous service with the respondent company from October, 1992 till 18.3.1997 cannot be said to have been proved. It is true that Ld. AR for the petitioner has also referred to documents mark A & B in support of his contention that the

petitioner had been in the employment of the respondent company. From these documents, no benefits can be taken by the petitioner because in the reply, the respondent company has pleaded that in the month of July, 1993 and thereafter in the month of March/April, 1994, the services of the petitioner had been engaged for temporary/casual work to cope with the extra load of work. On the other hand, by examining Shri D.S Pannu (RW-1), the respondent company has proved, from documentary as well as oral evidence, that on the application, Ex. RW-1/B, when the petitioner had been engaged/appointed by Allied Services on 1.2.1995, on the same day, he was deputed to do work with the respondent company.

14. The evidence of Shri S.C Katoch (RW-2) goes to show that the respondent company has been granted a certificate of registration under sub section 2 of section 7 of the Contract Labour Act, copy of which is Ex. RW-2/A. He further states that the respondent company had entered into an agreement for the supply of contract labour with Allied service through Col. Om Dogra, the copy of which is Ex. RW-2/A. Since Col. Dogra died a fresh agreement was entered into with said company through D.S Panu, copy of which is Ex. RW-2/B. The petitioner had been employed through aforesaid allied services, on 1.2.1995.

15. From the statement of Shri S.C Katoch (RW-2), it is further established that the respondent company had an agreement with Allied Service, the copies of which is Ex. RW-1/A and Ex. RW-1/B. Pursuance to the said agreement, the petitioner had been employed through Allied Services on 1.2.1995. It is true that as far as Allied Services is concerned, it has no contract licence under the Contract Labour (Regulation & Abolition), Act, 1970 but in the statement of Shri D.S Pannu, it has come that since the number of persons with Allied Services is less than 20, for this reason, there is no legal requirement to obtain licence. In the absence of evidence to the contrary, his such version goes un-impeached. Thus, from the evidence which has been referred to above, it stands duly proved that the services of the petitioner had been engaged by the Allied Services, on 1.2.1995, vide Ex. RW-1/B and that he was deputed to do work with the respondent company as per agreements, copies of which are Ex. RW-1/A and Ex. RW-1/B. I do not find any legal force in the contention of the Ld. AR for the petitioner that alleged agreement/contract between the respondent company and Allied Services /Contractor was sham and camouflage.

16. It is to be observed that the petitioner has specifically stated in his claim petition that he had been employed by the respondent company, in the month of October, 1992 and continued to remain till 18.3.1997, when his services were illegally terminated. From his such contention, it is abundantly clear that he does not claim himself to be the employee of the contractor/Allied Services. On the contrary, it has been proved, on record, that his services had been engaged by the Allied Services on 1.2.1995. When such is the position, which emerges from the evidence, on the record, then the claim of the petitioner that his services had been terminated, illegally and in an unjustified manner, by the respondent company in contravention of the provisions of the Act, totally falls to the ground. Had the petitioner proved, on record, that his services had been engaged by the respondent company and that he continued to remain in service from October, 1992 to March/April, 1997, it was required, to be ascertained by this Court, as to whether he had completed 240 days in the twelve calendar month preceding his alleged termination. Another plea of the petitioner that his juniors have been retained/engaged by the respondent company could also have been relevant if he had proved himself to be the employee of the respondent company. Even, the petitioner has not stated even a single word that in every calendar year, he had completed 240 days much less in the twelve calendar months preceding his termination. His version to this effect that more than 100 persons were employed by the respondent company, after his termination also does not hold good, as in this regard, he has not brought any documentary proof. Thus, for my above discussion, I have no hesitation in holding that the petitioner has miserably failed to prove this issue to which my answer is in "No".

Issue No. 2 :

17. The stand of the respondent company is that the services of the petitioner had been taken through the contractor w.e.f. 1.2.1995 and that on 17.3.1997, he, on his own, left the company. In the statement of Shri S.C Katoch (RW-2), it has come that the petitioner had worked w.e.f. 1.2.1995 till 17.3.1997, intermittently, and that he had settled his claim vide Ex. RW-1/J (objected to). When regard is given to the statement of Shri D.S Pannu (RW-1) it is revealed that the petitioner, who had been deputed with the respondent company, had stopped coming after 17.3.1997, voluntarily, and that he took his full & final settlement on 17.3.1995 vide Ex. RW-1/J.

18. The petitioner (PW-1) has denied of having taken full & final settlement from Allied Services but admitted his signatures on Ex. RA, at point „A” by further stating that he does not know about its contents. It has been specifically stated by Shri S.C Katoch (RW-2) that the petitioner had written letter Ex. RW-1/K to the respondent company for the issuance of experience certificate and that on his such letter, he (RW-2), had issued experience certificate, the copy of which is Ex. RW-2/C. It is true that the petitioner has stated that he does not know about the contents of Ex. RA but on this document, he admits his signatures. The evidence of Shri S.C Katoch (RW-2), clearly goes to show that experience certificate Ex. RW-2/C had been issued to the petitioner, on his letter, Ex. RW-2/K. In my considered view, the genuineness of letter Ex. RA cannot be doubted because on it, the petitioner admits his signatures. As per this letter, for his future prospects, he needed the experience certificate by mentioning that he had worked in the respondent company between Jan., 1995 to 17.3.1997. Had the services of the petitioner been terminated, as is his contention, he was not to make a request to the respondent company for the issuance of experience certificate. It has been specifically stated by Shri D.S Pannu (RW-1), that vide Ex. RW-1/J, the petitioner had taken full & final settlement on 17.3.1997. His such version gets credence from Ex. RA as per which, the petitioner had requested the respondent company for the issuance of experience certificate. In these circumstances, there remains no place for doubt that the petitioner had left the job, on his own, on having taken full & final settlement, for better future prospects for which he had applied to the respondent company vide Ex. RA and on his such request, an experience certificate, Ex. RW-2/C was issued in his favour. Thus, the respondent succeeds in proving that the petitioner had abandoned the job, on his own and accordingly, my answer to this issue is in “Yes”.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 21st June, 2010 in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF A.S. JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT NALAGARH

Ref No. 160 of 2006.
Instituted on 18.11.2006.
Decided on. 18.6.2010.

Paras Kumar S/o Shri Ghanshyam Jha through Shri Satish Kumar, Branch Secretary, HP AITUC,
Head Quarter Near State Bank of Patiala, Baddi, District Solan, H.P.

..Petitioner.

VS.

The Managing Director M/s Saluja Exim Limited, Plot no. 90, Industrial Area Baddi, District Solan
..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Shri Rajeev Sharma, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Paras Kumar S/o Shri Ghanshyam Jha workman by the Managing Director M/s Saluja Exim Ltd. Plot no.90, Industrial Area Baddi, District Solan, HP w.e.f. 18.7.2004 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the above workman is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workmen is entitled to?"

2. Briefly, the case of the petitioner is that he was appointed as Pressman, in the month of May, 2002 by the respondent company and continued as such till 18.7.2004, when he was illegally removed from service, without any cogent reason or justification. Even, for the month of July, 2004, he was not paid his earned wages. His last drawn salary was approximately Rs. 4,500/- per month. It is further averred that he had completed 240 days in each calendar year and also in the twelve calendar months preceding his termination. Apart from this, his juniors have been retained in service. Since, his services were terminated in violation of the provisions of Industrial Disputes Act, 1947 (hereinafter referred Act), he deserves to be reinstated in service with all the consequential benefits.

3. Petition has been contested on having raised various preliminary objections including maintainability and that the petitioner has not come before this court, with clean hands. On merits, it has been asserted that, on his own, w.e.f. July, 2004, the petitioner left his job. Moreover, he does not fall in the category of worker as he used to work some-times inside the factory premises as well as outside, as per his sweet will, on piece rate. Apart from this, there was a simple contract between the parties, as per which, the petitioner was required to iron the shirts as much as he could have done and the respondent company was to make the payments, accordingly. He had also received full & final settlement, at the time of abandoning the services. It has been denied that he had completed 240 days. Other allegations denied.

5. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

6. Pleadings of the parties gave rise to the following issues, which were struck on 12.11.2008.

1. Whether the termination of services of Paras Kumar workman by the Managing Director M/s Saluja Exim Ltd. Baddi District Solan, HP w.e.f. 18.7.2004 without complying with the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged? OPP.
2. If issue no.1 is proved, to what service benefits and amount of compensation, the aggrieved workman is entitled to? OPP.
3. Whether the claim is not maintainable in the present form? OPR.
4. Whether the petitioner does not fall under the category of workman as alleged? OPR.
5. Whether the petitioner is gainfully employed? If so, its effect? OPR.
6. Relief.

7. Before I proceed further, it is worthwhile to point out that the evidence of the petitioner was closed by the order of this Court dated 18.6.2010, for the detailed reasons, narrated therein including that despite having been afforded six opportunities, he had either failed to examine himself or to lead his evidence.

8. I have heard the learned counsels for the parties and have also gone through the record of the case carefully.

9. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No. 1 :	No.
Issue No. 2 :	Becomes redundant.
Issue No. 3 :	No.
Issue No. 4 :	No.
Issue No. 5 :	No accordingly.
Relief.	Reference answered in favour of the respondent and against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

10. It has been alleged by the petitioner that preceding twelve calendar months from the date of his alleged termination i.e. 18.7.2004, he had completed 240 days. In support of his such assertion, neither any documentary evidence has been brought, on record, nor the petitioner has examined himself. In order to get the benefit of section 25F of the Act, it was obligatory upon the petitioner to have proved that he had completed 240 days in twelve calendar months preceding his termination. Another plea, which has been taken by the petitioner, is that his juniors have been retained by the respondent. To prove this fact, there is also no evidence. Consequently, for the failure of the petitioner to have led evidence to prove that, before his termination, he had completed 240 days and also that juniors to him are still in service and further that his services had been terminated by the respondent on 18.7.2004, in contravention of the provisions of the Act, I have no hesitation in holding that he has failed to prove this issue to which my answer is in "No".

Issue No. 2 :

11. In view of my findings, on issue no.1, above, this issue becomes redundant.

Issue No. 3 :

12. Consequent upon the reference, which has been made to this Court, the petitioner has filed statement of claim. It is not understandable as to why the claim of the petitioner is not maintainable in the present form. Moreover, at the time of arguments, it could not been explained on behalf of the respondent, as to why, the claim of the petitioner is not maintainable. Thus, by holding it to be maintainable, my answer to this issue is in "No".

Issue No. 4 :

13. Admittedly, the services of the petitioner had been engaged by the respondent. However, there is a dispute between the parties regarding the month, in which his services were so engaged. Whereas the contention of the petitioner is to this effect that his services had been engaged in the month of May, 2002, as per the respondent, he was engaged in the month of April, 2002. Since, he (petitioner) had been engaged by the respondent to do Iron work, definitely, he falls under the category of workman as per section 2 (s) of the Act. Consequently, I hold that the respondent has failed to prove that the petitioner does not fall under the category of workman and my answer to this issue is in "No".

Issue No. 5 :

14. When regard is given to the reply, filed by the respondent, it is abundantly clear that there is no such plea, having been taken, that the petitioner is gainfully employed. I may mention that initial onus was upon the petitioner to have proved that he has not been gainfully employed, after his termination. In

these circumstances, for want of evidence, I hold that the respondent has not discharged its onus to establish that the petitioner is gainfully employed. Thus, this issue is decided in "No" accordingly.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against the petitioner and in favour of respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 18th June, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla
Camp at Nalagarh.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA CAMP AT NALAGARH

Ref No. 161 of 2006.
Instituted on 18.11.2006.
Decided on. 18.6.2010.

Mohd. Sajim S/o Shri Mohd. Sasim Uddin C/o Shri Satish Kumar, Branch Secretary, HP AITUC,
Head Quarter Near S.B.O.P., Baddi, District Solan, HP.

..Petitioner.

VS.

The Managing Director M/s Saluja Exim Limited, Plot no. 90, Industrial Area Baddi, District Solan.
..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, Ld. AR.

For respondent: Shri Rajeev Sharma, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

"Whether the termination of services of Shri Mohd. Sajim S/o Shri Mohd. Sasim Uddin workman by the Managing Director M/s Saluja Exim Ltd. Plot No. 90, Industrial Area Baddi, District Solan, HP w.e.f. 18.7.2004 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the above workman is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workmen is entitled to?"

2. Briefly, the case of the petitioner is that he was appointed as Tailor, in the month of May, 2002 by the respondent company and continued as such till 18.7.2004, when he was illegally removed from service, without any cogent reason or justification. Even, for the month of July, 2004, he was not paid his earned wages. His last drawn salary was approximately Rs. 4,500/- per month. It is further averred that he

had completed 240 days in each calendar year and also in the twelve calendar months preceding his termination. Apart from this, his juniors have been retained in service. Since, his services were terminated in violation of the provisions of Industrial Disputes Act, 1947 (hereinafter referred Act), he deserves to be reinstated in service with all the consequential benefits.

3. Petition has been contested on having raised various preliminary objections including maintainability and that the petitioner has not come before this court, with clean hands. On merits, it has been asserted that he does not fall in the category of worker as he used to work outside the factory premises, as per his sweet will, on piece rate. Apart from this, there was a simple contract between the parties, as per which, the petitioner was required to stitch the shirts as much as he could have done and the respondent company was to make the payments, accordingly. It has been denied that he had completed 240 days. Other allegations denied.

5. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

6. Pleadings of the parties gave rise to the following issues, which were struck on 12.11.2008.

1. Whether the termination of services of Shri Mohd. Sajim workman by the Managing Director M/s Saluja Exim Ltd. Baddi District Solan, HP w.e.f. 18.7.2004 without complying with the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged?

OPP.

2. If issue no.1 is proved, to what service benefits and amount of compensation, the aggrieved workman is entitled to?

OPP.

3. Whether the claim is not maintainable in the present form?

OPR.

4. Whether the petitioner does not fall under the category of workman as alleged?

OPR.

5. Whether the petitioner is gainfully employed? If so, its effect?

OPR.

6. Relief.

7. Before I proceed further, it is worthwhile to point out that the evidence of the petitioner was closed by the order of this Court dated 18.6.2010, for the detailed reasons, narrated therein including that despite having been afforded six opportunities, he had either failed to examine himself or to lead his evidence.

8. I have heard the learned counsels for the parties and have also gone through the record of the case carefully.

9. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No. 1 :	No.
Issue No. 2 :	Becomes redundant.
Issue No. 3 :	No.
Issue No. 4 :	No.
Issue No. 5. :	No accordingly.
Relief :	Reference answered in favour of the respondent and against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

10. It has been alleged by the petitioner that preceding twelve calendar months from the date of his alleged termination i.e. 18.7.2004, he had completed 240 days. In support of his such assertion, neither any documentary evidence has been brought, on record, nor the petitioner has examined himself. In order to get the benefit of section 25F of the Act, it was obligatory upon the petitioner to have proved that he had completed 240 days in twelve calendar months preceding his termination. Another plea, which has been taken by the petitioner, is that his juniors have been retained by the respondent. To prove this fact, there is also no evidence. Consequently, for the failure of the petitioner to have led evidence to prove that, before his termination, he had completed 240 days and also that juniors to him are still in service and further that his services had been terminated by the respondent on 18.7.2004, in contravention of the provisions of the Act, I have no hesitation in holding that he has failed to prove this issue to which my answer is in "No".

Issue No. 2:

11. In view of my findings, on issue no.1, above, this issue becomes redundant.

Issue No. 3 :

12. Consequent upon the reference, which has been made to this Court, the petitioner has filed statement of claim. It is not understandable as to why the claim of the petitioner is not maintainable in the present form. Moreover, at the time of arguments, it could not been explained on behalf of the respondent, as to why, the claim of the petitioner is not maintainable. Thus, by holding it to be maintainable, my answer to this issue is in "No".

Issue No. 4 :

13. Admittedly, the services of the petitioner had been engaged by the respondent to do stitching work. Since, he (petitioner) had been engaged by the respondent to do stitching work, definitely, he falls under the category of workman as per section 2 (s) of the Act. Consequently, I hold that the respondent has failed to prove that the petitioner does not fall under the category of workman and my answer to this issue is in "No".

Issue No. 5 :

14. When regard is given to the reply, filed by the respondent, it is abundantly clear that there is no such plea, having been taken, that the petitioner is gainfully employed. I may mention that initial onus was upon the petitioner to have proved that he has not been gainfully employed, after his termination. In these circumstances, for want of evidence, I hold that the respondent has not discharged its onus to establish that the petitioner is gainfully employed. Thus, this issue is decided in "No" accordingly.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result, the reference stands answered against the petitioner and in favour of respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 18th June, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla
Camp at Nalagarh.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref no. 225 of 2002.
Instituted on 12.8.2002.
Decided on. 8.6.2010.

Gain Chand S/o Shri Het Ram R/o Village Bodhna, P.O & Tehsil Chopal, District Shimla, H.P.

..Petitioner.

VS.

The Executive Engineer, HPSEB, Division Chopal, Tehsil Chopal, District Shimla, H.P.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri G.S Rathore, Advocate.

For respondent: Shri Bhagwan Chand, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-
2. In nutshell, the case of the petitioner is that he was engaged as daily wage beldar on 18.2.1982 and worked as such for the construction and repair of HPSEB line under Chopal Division. In the month of March, 1986, his services were terminated without assigning any reason. On his requests, he was reengaged on 1.8.1996 and worked till 31.12.1996, when his services were again terminated, without assigning any reason. It has been alleged that his juniors namely Dulchi Ram, Ravinder singh, Roshan Lal and Murat Singh, continued to remain in job. Since, his services were terminated in violation of the provisions of section 25F, 25G & H of the Industrial Disputes Act, 1947 (hereinafter referred Act), he deserves to be reinstated in service with all consequential benefits.
3. The claim of the petitioner has been contested on having raised various preliminary objections including maintainability and limitation. On merits, it has been asserted that the petitioner had been engaged on 26.1.1982 and not on 8.2.1982 as alleged and that he continued to work till 25.10.1982, when he left the job, on his own. On 26.3.1984, he was reengaged and worked till 25.8.1984, when he again left the job on his own. Thereafter, he was again reengaged on 4.8.1996 and continued to work till 25.1.1998 with some breaks. The services of the petitioner had never been terminated. On the contrary, he had left the job, on his own, without assigning any reason. During the period, he remained in job, he had availed wilful breaks. In no calendar year, he had completed 240 days. It has been denied that the juniors to the petitioner have been retained in job. The persons, who have been named by the petitioner, are senior to him. Further, Since they had not left the job, they continued to remain on the rolls of the respondent. Other allegations denied.
4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondent.
5. Pleadings of the parties gave rise to the following issues which were struck on 2.12.2005.
 1. Whether the services of the petitioner have been illegally terminated by respondent without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect?

OPP.
 2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to?

OPP.
 3. Whether the petition in the present form is not maintainable?

OPR.
 4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No. 1 :	Yes.
Issue No. 2 :	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue No. 3 :	No.
Relief :	Reference answered in favour of the petitioner and against the respondent, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

8. The petitioner has assailed his termination w.e.f. 1.3.1998, on two grounds, i.e. his services were terminated in violation of the provisions of section 25F of the Act and also that his juniors are still in service and for this reason, his termination has been in violation of the provisions of section 25G & H of the Act.

9. On the contrary, the defence version is to this effect that at no point of time, the services of the petitioner had been terminated, but on each occasion, he had left the services on his own. It has been denied that the persons junior to the petitioner, as named, have been retained in service.

10. While appearing in the witness box as PW-1, the petitioner has supported all the material facts including that juniors to him namely S/Shri Dulchi Ram, Ravinder, Kalyan etc. are still in job. He further stated that the respondent, intentionally, terminated his service, so that he could not complete 240 days in any calendar year and also used to give him breaks during the period when he remained in job. Before terminating his services, neither any notice had been given to him nor compensation. In the cross-examination, he admitted of not having completed 240 days in any calendar year but denied to have left the job, on his own and also that his juniors are not in job.

11. Shri Bansi Lal, RW-1, has proved the mandays chart Ex. RA of the petitioner. According to him, the services of the petitioner had never been terminated by the respondent but he left the job, on his own. No juniors to the petitioner have been engaged by the respondent when the petitioner left the job. In the cross examination, he has stated that, orally the petitioner had been asked to resume his duties. He denied that Ravinder Singh etc. are juniors to the petitioner.

12. I may point out that, it has been alleged by the petitioner that his services have been terminated in violation of section 25F of the Act but neither from his oral evidence nor documentary evidence, on record, including Ex. RA (mandays chart), it has been proved that in the twelve calendar months preceding his termination, he had completed 240 days. The provisions of section 25F were required to be complied with by the respondent, only if, the petitioner had completed 240 days preceding his termination. Since, it has not proved that he had completed 240 days in any calendar year, including twelve calendar months preceding his termination, his alleged termination cannot be said to be illegal & unjustified for violation of the provisions of section 25F of the Act. It has been specifically stated by the petitioner (PW-1) that juniors to him namely Dulchi Ram, Ravinder kalia etc. are still working with the respondent and that he had never left the job, on his own. Since, the plea taken by respondent is to this effect that the petitioner had, himself, left the job, it was required of the respondent to have proved this fact by cogent and reliable evidence. In the statement of Shri Bansi Ram (RW-1), it has come that no notice had been sent to he petitioner to resume his duties. Undoubtedly, he has also stated that, orally, he (petitioner) had been asked to resume duties but his such version does not inspire confidence for want of independent corroboration/support. It has been held by our own Hon'ble High Court in *latest HLJ 2007 (HP) 903 State of HP & Others Vs. Bhatag Ram & Another.* that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

13. Thus, keeping in view the evidence on record as well as law laid down in the ruling (supra), I have no hesitation in holding that the respondent has failed to prove that the petitioner had left the job on his own.

14. In the petition, the names of S/Shri Ravinder Singh, Roshan Lal, Dulchi Ram, Murat Singh & Kalyan Singh have been specifically mentioned in para 2, who, as per the petitioner, are junior to him and still in job. In his statement, before this court, as PW-1, he (petitioner) has supported this fact on oath. The respondent has not brought on record any such documentary proof which could go to show that the above named persons are either not junior to the petitioner or that they are not still in job with the respondent. In the absence of any such evidence, led by the respondent, the evidence led by the petitioner to the effect that his juniors are still in service, is required to be believed and relied upon. It has been held by our own Hon'ble High Court incase titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. that :-

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

15. Since, on the record, it stands established that juniors to the petitioner, as mentioned above, are still in job, his termination, being in violation of the provisions of section 25 G & H of the Act, is illegal and unjustified. Consequently, my answer to this issue is in “Yes” accordingly.

Issue No. 2 :

16. Since, the petitioner has failed to prove that he has not been gainfully employed after his termination, I, without hesitation, hold that he is not entitled for back wages. However, since his services were terminated against the provisions of the Act, he is entitled to be reinstated, with seniority and continuity in service but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

Issue no.3.

17. It is not understandable as to why this petition is not maintainable in the present form, particularly, when it has been filed in pursuance to the reference made to this Court by the Labour Commissioner. Apart from it, the learned counsel for respondent could not explain as to why this petition is not maintainable in the present from. Accordingly, by holding it to be maintainable, my answer to this issue is in “No”.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and it is ordered that he(petitioner) be reinstated in service, with seniority and continuity but without back wages, from the date of his termination i.e 1.3.1998. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 8th June, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, SHIMLA

Ref No. 239 of 2001.
Instituted on 5.11.2001.
Decided on 30.6.2010.

Alkesh Verma s/o Shri Lachmi Narayan Verma R/o House no.B-1-1395, Pink Vihar, G.T Road
Ludhiana.

..Petitioner.

VS.

The Managing Director, Johnson & Johnson Ltd. Consumer Product Division-30, Forest Street,
Mumbai-400036

..Respondent..

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri O.P Sharma, Advocate.

For respondent: Shri Vijay Pandit, Advocate.

AWARD

1. The reference for adjudication, sent by the appropriate government, is as under:-

2. In nutshell, the case of the petitioner is that he was serving under the respondent company as field representative w.e.f. 13.2.1985 and later on promoted as Territory Supervisor in the year, 1988. In the year, 1990, he was promoted as Territory Officer and thereafter as Field Manger w.e.f. 1997. During his service period, his work and conduct had been found satisfactory by the respondent company and there was no complaint, whatsoever, against him, from any quarter. On 15.4.1998, a communication was received from the management of the respondent where by allegations were levelled against him (petitioner) and he was also informed that his services would stand terminated with immediate effect, for loss of confidence. He had also been served with one month's notice. It had also been informed that in lieu of one month's notice, he was to be paid one month's salary. It is further averred that on 1.5.1998, he had been called at Delhi Office of the respondent company where he was forced to submit his resignation w.e.f. 13.4.1998, by terrorizing him. In fact, it had not been tendered voluntarily. In this regard, he had also lodged report with the Commissioner of Delhi Police. Thus, by unfair labour practice, he had been forced to resign from service. It is further averred that his last posting was at Shimla and that S/Shri Amit Sarkar & S.K Malhotra of the respondent company had forced him to resign from backdate i.e. from 13.4.1998 whereas he was relieved on 1.5.1998. He had neither been afforded any opportunity nor hearing before terminating his services. As the action of the respondent was totally illegal and arbitrary, he deserves to be reinstated with all the consequential benefits.

3. Petition has been contested, on having raised preliminary objections, including maintainability, estoppel and suppression of material facts. On merits, it has been asserted that the conduct of the petitioner had been most unsatisfactory and that he was also guilty of breach of trust, amounting to penal offence. It has been specifically denied that he had been forced to resign. As a matter of fact, he had resigned voluntarily to avoid criminal prosecution. The last place of posting of the petitioner was no at Shimla. The petitioner had resigned for better opportunities and that he had also accepted dues by way of full & final settlement, without any objection. Since, he had resigned, voluntarily, there was no question for holding enquiry. It has been denied that he was relieved on 1.5.1998 and not on 3.4.1998. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 1.3.2006.

1. Whether the petitioner has been forcibly terminated by taking his resignation letter dated 13.4.1998 under threat? If so, its effect?

OPP.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to?

OPP.

3. Whether the claimant has no locus standi and he is not a workman under I.D Act, 1947 and the petition is not maintainable?

OPR.

4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 : No

Issue No. 2 : Becomes redundant.

Issue No. 3 : No.

Relief : Reference answered against the petitioner, per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

8. The contention of the petitioner is to this effect that the respondent company had forced him to tender resignation on 13.4.1998, which in fact was taken, from him, on 1.5.1998 under threat/coercion. On the contrary, the defence version is that since the conduct of the petitioner was most unsatisfactory and he was guilty of breach of trust, amounting to penal offence, he voluntarily tendered his resignation.

9. According to the petitioner (PW-1) that he had received a communication dated 15.4.1998, whereby, the respondent management had levelled allegations against him by also informing that his services stood terminated, with immediate effect, for loss of confidence. Thereafter, he had been called at the New Delhi Office on 1.5.1998, where he was forced to submit his resignation w.e.f. 13.4.1998 by terrorizing him. The resignation was not voluntarily but the same had been got obtained under pressure, regarding which, he had lodged a report with the Commissioner of Delhi Police. He had never been charge sheeted nor any enquiry conducted against him. Without affording any opportunity, of being heard, he had been condemned unheard. In the cross examination, he admitted that letter Ex. RB, contains his signatures and that he lodged a report with Delhi Police against the respondent. Regarding the fate of his such complaint, he does not know. He denied that the same was not pursued since it was false. He further denied that the respondent company had got annoyed against him when it came to know that he used to make false TA bills and various expenditure bills. It has also been denied that when the company was about to lodge an FIR against him, he voluntarily submitted his resignation. He admitted that a Cheque dated 29.4.1998 for Rs. 69,271/- was handed over to him along with other cheque of Rs. 1,59,863/- by the respondent company which are Ex. RC & Ex. RD. He denied that his claim has been fully settled by the respondent company, by making full & final payment vide cheques Ex. RC & Ex. RD.

10. Shri Vijay Yashwant Willankar (RW-1), has appeared in the witness box to state that he is fully conversant with the facts of the case. According to him, letter Ex. RB had been received in their office and in pursuance thereto, the resignation of the petitioner was accepted. They had also issued a letter Ex. RA to the petitioner, on his relieving the job. Since, the petitioner had been involved in financial irregularities, for this reason, he tendered his resignation. The respondent company was contemplating to lodge an FIR

against him. Since, he had expressed his desired to resign, the FIR was not lodged. The petitioner had also decided to resign because he was to get better job and also that the company had lost faith in him. All the due of the petitioner has been settled in full & final at the time when his resignation was accepted. The petitioner had been issued/sent cheques Ex. RC & Ex. RD. In the cross examination, he has stated that the petitioner was not working, directly, under him but he was working under Regional Sales manager. He had not been looking after the work of said branch. He admitted that the services of the petitioner were terminated on 13.4.1998 and that he was relieved on 1.5.1998, at Delhi. He explained that since the respondent company had lost confidence in the petitioner, he made a request that he was to have better job prospects and for this reason, his termination be cancelled and that he be allowed to resign, from the job. On his such request, the termination was cancelled and his resignation was accepted. He denied that S/Shri Amit Sarmar & S.K Malhotra had forcibly taken resignation from the petitioner by threatening that in case, he did not do the needful, criminal case for theft and embezzlement was to be registered against him. Neither any show cause notice nor any charge sheet was served upon the petitioner. There was no such need as he had voluntarily resigned. The employees of the respondent company are governed by Model Standing Orders, which he has not brought. He admitted that the said standing orders were not complied with, in this case.

11. In the statement of the petitioner (PW-1), it has come that he had been forced to submit his resignation on 1.5.1998 at Delhi Office w.e.f. 13.4.1998 by terrorizing him. At the time of arguments, it had been submitted by the Ld. Counsel for the petitioner that the signatures of the petitioner had been obtained on blank paper but this contention does not hold good for the reason that Ex. RB goes to show that it has been in the hand of the petitioner. This resignation is dated 13.4.1998 and the reason for resigning has been given "Better Career Opportunities". It has also been mentioned that the period of the notice starts from today i.e 13.4.1998 and that he would be obliged, if relieved by 30.4.1998. It is true that as per letter dated 15.4.1998, the services of the petitioner stood terminated with immediate effect, for loss of confidence but in the statement of Shri Vijay Yashwant Willankar (RW-1), it has come that since the petitioner had made request that he was to have better job prospects, he be allowed to resign by canceling his termination and that on his such request, his termination was cancelled and resignation accepted. The evidence of RW-1, further goes to show that the respondent company had been contemplating to lodge an FIR against the petitioner for financial irregularities but since, he had tendered his resignation, the same was not lodged. At this stage, I would like to point out that in the statement of petitioner (PW-1), it has come that regarding his forcible resignation, he lodged a report with the Commissioner of Delhi Police but no such report has been brought before this court. Even, no steps were taken to get procured the record pertaining to such report from the concerned office of the Commissioner. . This could have been very material piece of evidence in support of the contention of the petitioner, regarding his forcible resignation. Since, this evidence has not been brought, on record, an adverse inference is required to be taken against the petitioner. Withholding of this evidence, further goes to substantiate the defence version that the petitioner had voluntarily tendered his resignation, in order to get better job and also to escape the registration of criminal case against him, for the alleged financial irregularities. Had it not been so, then the petitioner was not to submit/tender his resignation Ex. RB, in his own hand. Apart from this, the petitioner (PW-1), has admitted that on 29.4.1998, he had been handed over a cheque for a sum of Rs. 69,271/- and another cheque of Rs. 1,59,863/- by the respondent company which are Ex. RC & Ex. RD. Although, he has denied that those cheques were by way of full & final settlement of his dues but had it not been so, he would not have accepted those cheques. This is another circumstance, which goes to support the contention of the respondent company that the petitioner had voluntarily tendered his resignation vide Ex. RB. In my view, there could not have been any occasion for the petitioner to have accepted the cheques in case, he had lodged a report with the Commissioner of Delhi Police, against the respondent company, to the effect that his resignation had been got obtained forcibly.

12. It is true that in the statement of Shri Vijay Yashwant Willankar (RW-1), it has come that the services of the petitioner were relieved on 1.5.1998 at Delhi office and that his resignation is of dated 13.4.1998 but this version has no effect, whatsoever, as far as tendering of resignation by the petitioner is concerned, which, on the record, has been proved to be voluntarily and not got obtained under pressure/force. Since, the petitioner had voluntarily resigned and his alleged termination had stood cancelled, there was no necessity for the respondent company to have served a charge sheet/show cause notice upon him or to have conducted domestic enquiry. Ld. Counsel for the petitioner has submitted that since the petitioner had not worked under Shri Vijay Yashwant Willankar (RW-1), his version cannot be relied upon but I do not agree with the Ld. Counsel, for the reason that this witness has categorically stated

that he is full conversant with the facts of the case and further, from the evidence, on record, it stands duly proved that the resignation of the petitioner had not been got obtained forcibly and under pressure. Consequently, for my above discussion, I hold that the petitioner has failed to prove that his resignation had been taken forcibly under threat and my answer to this issue is in "No".

Issue No .2:

13. Since, while deciding issue no.1, I have already held that the services of the petitioner had not been terminated and that he tendered his resignation after receiving full & final settlement vide cheques Ex. RC & Ex. RD, this issue becomes redundant.

Issue No. 3.

14. Definitely, the petitioner has locus standi to file the claim petition, which has been filed in pursuance to the reference, having been made to this Court. Since there is no evidence, led by the respondent company that he (petitioner) was performing supervisory work and further that at the time of arguments, it could not be explained as to why the petitioner was not a workman, I, without hesitation, hold that the respondent has failed to prove this issue to which my answer is in "No".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 30th June, 2010 in the presence of parties counsels.

By order,
A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

सामान्य प्रशासन विभाग

ख-अनुभाग

अधिसूचना

शिमला-2, 24 जून, 2010

संख्या: जी.ए.बी.-ए(3)-9/2004.—हिमाचल प्रदेश की राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, हिमाचल प्रदेश राज्यपाल सचिवालय में हाउस-कीपर, वर्ग-III (अराजपत्रित) के पद के लिए इस अधिसूचना से संलग्न उपाबन्ध-"क" के अनुसार भर्ती और प्रोन्नति नियम बनाती हैं, अर्थात्:-

1. संक्षिप्त नाम और प्रारम्भ.—(1) इन नियमों का संक्षिप्त नाम, हिमाचल प्रदेश राज्यपाल सचिवालय हाउस-कीपर, वर्ग-III (अराजपत्रित) भर्ती और प्रोन्नति नियम, 2010 है।

(2) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होंगे।

आदेश द्वारा,
हस्ता/-
सचिव।

हिमाचल प्रदेश राज्यपाल सचिवालय में हाउस-कीपर वर्ग-III (अराजपत्रित) के पद के लिए भर्ती और प्रोन्नति नियम ।

1. पद का नाम.—हाउस-कीपर
2. पदों की संख्या— 1(एक)
3. वर्गीकरण.— वर्ग-III (अराजपत्रित)
4. वेतनमान.—(i) नियमित पदधारियों के लिए वेतनमान.— पे बैंड 10300-34800 रुपए जमा ग्रेड पे 3200/- रुपए ।

(ii) संविदा पर नियुक्त कर्मचारियों के लिए उपलब्धियां.—स्तम्भ संख्या: 15-क में दिए गए ब्यौरे अनुसार 13500/-रुपए प्रति मास ।

5. चयन पद अथवा अचयन पद.—लागू नहीं ।

6. सीधी भर्ती के लिए आयु.—18 से 45 वर्ष :

परन्तु सीधे भर्ती किए जाने वाले व्यक्तियों के लिए ऊपरी आयु सीमा, तदर्थ या संविदा के आधार पर नियुक्त किए गए व्यक्तियों सहित पहले से सरकार की सेवा में रत अभ्यर्थियों को लागू नहीं होगी :

परन्तु यह और कि यदि तदर्थ या संविदा के आधार पर नियुक्त किया गया अभ्यर्थी इस रूप में नियुक्ति की तारीख को अधिक आयु का हो गया हो, तो वह तदर्थ या संविदा के आधार पर नियुक्ति के कारण विहित आयु में छूट के लिए पात्र नहीं होगा :

परन्तु यह और कि अनुसूचित जातियों/अनुसूचित जन-जातियों / अन्य वर्गों के व्यक्तियों के लिए ऊपरी आयु सीमा में उतनी ही छूट दी जा सकेगी, जितनी हिमाचल प्रदेश सरकार के साधारण या विशेष आदेशों के अधीन अनुज्ञेय है:

परन्तु यह और भी कि पब्लिक सैक्टर, निगमों तथा स्वायत्त निकायों के सभी कर्मचारियों को, जो ऐसे पब्लिक सैक्टर, निगमों/स्वायत्त निकायों के प्रारम्भिक गठन के समय ऐसे पब्लिक सैक्टर निगमों/स्वायत्त निकायों में आमेदन से पूर्व सरकारी कर्मचारी थे, सीधी भर्ती में आयु की सीमा में ऐसी ही रियायत दी जाएगी, जैसी सरकारी कर्मचारियों को अनुज्ञेय है, किन्तु इस प्रकार की रियायत पब्लिक सैक्टर निगमों तथा स्वायत्त निकायों के ऐसे कर्मचारिवृन्द को नहीं दी जाएगी, जो पश्चातवर्ती ऐसे निगमों/स्वायत्त निकायों द्वारा नियुक्त किए गए थे/ किए गए हैं और उन पब्लिक सैक्टर निगमों/ स्वायत्त निकायों के प्रारम्भिक गठन के पश्चात् ऐसे निगमों/ स्वायत्त निकायों की सेवा में अन्तिम रूप से आमेलित किए गए हैं/ किए गए थे ।

(1) सीधी भर्ती के लिए आयु सीमा की गणना, उस वर्ष के प्रथम दिवस से की जाएगी, जिसमें पद(पदों) को, आवेदन आमन्त्रित करने के लिए यथास्थिति विज्ञापित किया गया है या नियोजनालयों को अधिसूचित किया गया है ।

(2) अन्यथा सुअर्हित अभ्यर्थियों की दशा में सीधी भर्ती के लिए आयु सीमा और अनुभव, यथास्थिति, हिमाचल प्रदेश लोक सेवा आयोग या अन्य भर्ती प्राधिकरण के, विवेकानुसार शिथिल किया जा सकेगा ।

7. सीधे भर्ती किए जाने वाले व्यक्तियों के लिए अपेक्षित न्यूनतम शैक्षिक और अन्य अर्हताएं.—(क) अनिवार्य अर्हता.—(i) किसी मान्यता प्राप्त विश्वविद्यालय/ संस्थान से स्नातक होना चाहिये ।

(ii) किसी मान्यता प्राप्त विश्वविद्यालय/संस्थान से हाउस कीपर के रूप में तीन वर्ष के अनुभव के साथ हाउस-कीपिंग का एक वर्ष का काफ़्ट कोर्स ।

(ख) वांछित अर्हता.—हिमाचल प्रदेश की रूढ़ियों, रीतियों और बोलियों का ज्ञान और प्रदेश में विद्यमान विशिष्ट दशाओं में नियुक्ति के लिए उपयुक्तता ।

8. सीधे भर्ती किए जाने वाले व्यक्तियों के लिए विहित आयु और शैक्षिक अर्हताएं प्रोन्नत व्यक्तियों की दशा में लागू होगी या नहीं—लागू नहीं ।

9. **परिवीक्षा की अवधि यदि कोई हो.**—दो वर्ष, जिसका एक वर्ष से अनधिक ऐसी और अवधि के लिए विस्तार किया जा सकेगा, जैसा सक्षम प्राधिकारी विशेष परिस्थितियों में, और लिखित कारणों से आदेश दें ।

10. **भर्ती की पद्धति, भर्ती सीधी होगी, प्रोन्नति, प्रतिनियुक्ति, स्थानान्तरण द्वारा और विभिन्न पद्धतियों द्वारा भरे जाने वाले पदों की प्रतिशतता शतप्रतिशत सीधी भर्ती द्वारा नियमित आधार पर या संविदा के आधार पर भर्ती द्वारा.**—दोनों के न होने पर सेकेण्डमेंट आधार पर । संविदा पर नियुक्त कर्मचारी स्तम्भ संख्या: 15—क में दी गई उपलब्धियां प्राप्त करेंगे और उक्त स्तम्भ में यथाविनिर्दिष्ट सेवा शर्तों द्वारा विनियमित होंगे ।

11. **प्रोन्नति, प्रतिनियुक्ति या स्थानान्तरण की दशा में श्रेणियां, जिनसे प्रोन्नति प्रतिनियुक्ति, स्थानान्तरण किया जाएगा.**—हिमाचल प्रदेश सरकार के अन्य विभागों में समरूप वेतनमान में कार्यरत इस पद के पदधारियों में से सेकेण्डमेंट आधार पर ।

12. **यदि विभागीय प्रोन्नति समिति विद्यमान हो तो उसकी संरचना.**—लागू नहीं ।

13. **भर्ती करने में जिन परिस्थितियों में हिमाचल प्रदेश लोक सेवा आयोग से परामर्श किया जायेगा.**—जैसा विधि द्वारा अपेक्षित है ।

14. **सीधी भर्ती के लिए अनिवार्य अपेक्षा.**—किसी सेवा या पद नियुक्ति के लिए अभ्यर्थी का भारत का नागरिक होना आवश्यक है ।

15. **सीधी भर्ती द्वारा पद पर नियुक्ति के लिए चयन.**—सीधी भर्ती के मामले में, पद पर नियुक्ति के लिए चयन मौखिक परीक्षा के आधार पर किया जाएगा, यदि, यथा स्थिति, हिमाचल प्रदेश लोक सेवा आयोग या अन्य भर्ती प्राधिकरण ऐसा करना आवश्यक या समीचीन समझे, तो लिखित परीक्षा या व्यावहारिक परीक्षा के आधार पर किया जाएगा, जिसका स्तर/पाठ्यक्रम आदि यथास्थिति, आयोग/अन्य भर्ती प्राधिकरण द्वारा अवधारित किया जाएगा :

15—क. संविदा के आधार पर नियुक्ति के लिए पद पर चयन.—इन नियमों में किसी बात के होते हुए भी, पद पर संविदा नियुक्तियों, नीचे दिए गए निबन्धनों और शर्तों के अधीन की जाएंगी:—

I. संकल्पना.—(क) इस पॉलिसी के अधीन हिमाचल प्रदेश राज्यपाल सचिवालय, में हाउस-कीपर को संविदा के आधार पर प्रारम्भ में एक वर्ष के लिए लगाया जाएगा, जिसे वर्षानुवर्ष आधार पर बढ़ाया जा सकेगा ।

(ख) **पद का हिमाचल प्रदेश अधीनस्थ सेवाएं चयन बोर्ड के कार्यक्षेत्र से बाहर होना.**—सचिव, राज्यपाल, पदों को संविदा के आधार पर भरने के लिए सरकार का अनुमोदन प्राप्त करने के पश्चात्, रिक्त पदों का ब्यौरा, कम से कम दो अग्रणी समाचार पत्रों में विज्ञापित करवाएगा और विहित अर्हताएं और इन नियमों में यथाविहित अन्य पात्रता शर्तों को पूरा करने वाले अभ्यर्थियों से आवेदन आमंत्रित करेगा ।

(ग) चयन इन नियमों में विहित पात्रता शर्तों के अनुसार किया जाएगा ।

II. संविदात्मक उपलब्धियाँ.—संविदा के आधार पर नियुक्त हाउस-कीपर को 13500/— रुपए की समेकित नियत संविदात्मक रकम (जो पे बैंड के न्यूनतम जमा ग्रेड पे के बराबर होगी) प्रतिमास संदत्त की जाएगी । यदि संविदा में एक वर्ष से अधिक की बढ़ोतरी की जाती है तो पश्चात्वर्ती वर्ष (वर्षों), के लिए संविदात्मक उपलब्धियों में पद के पे बैंड के न्यूनतम जमा ग्रेड पे का तीन प्रतिशत के बराबर रकम की वार्षिक वृद्धि के रूप में अनुज्ञात की जाएगी ।

III. नियुक्ति/अनुशासन प्राधिकारी.—सचिव, राज्यपाल हिमाचल प्रदेश, नियुक्ति और अनुशासन प्राधिकारी होगा ।

IV. चयन प्रक्रिया.—संविदा नियुक्ति की दशा में पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा या यदि आवश्यक या समीचीन समझा जाए तो लिखित परीक्षा या व्यावहारिक परीक्षा के आधार पर किया जाएगा, जिसका स्तर/पाठ्यक्रम इत्यादि सम्बद्ध भर्ती अभिकरण अर्थात् सचिव, राज्यपाल हिमाचल प्रदेश द्वारा अवधारित किया जाएगा ।

V. संविदात्मक नियुक्तियों के लिए चयन समिति.—जैसी सम्बद्ध भर्ती प्राधिकरण अर्थात् सचिव, राज्यपाल हिमाचल प्रदेश द्वारा समय समय पर गठित की जाए ।

VI. करार.—अभ्यर्थी को, चयन के पश्चात् इन नियमों से संलग्न उपाबन्ध "ख" के अनुसार करार हस्ताक्षरित करना होगा ।

VII. निबन्धन और शर्तें.—(क) संविदा के आधार पर नियुक्त व्यक्ति को 13500/—रुपए की नियत संविदात्मक रकम (जो पे बैंड के न्यूनतम जमा ग्रेड पे के बराबर होगी) प्रतिमास संदत्त की जाएगी । संविदा पर नियुक्त व्यक्ति आगे बढ़ाए गए वर्ष/वर्षों के लिए संविदात्मक रकम में पद के पे बैंड के न्यूनतम जमा ग्रेड पे का तीन प्रतिशत की वार्षिक वृद्धि का हकदार होगा और अन्य कोई सहबद्ध प्रसुविधाएं, जैसे वरिष्ठ/चयन वेतनमान आदि नहीं दिया जाएगा ।

(ख) संविदा पर नियुक्त व्यक्ति की सेवा पूर्णतया अस्थाई आधार पर होगी । यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है, तो नियुक्ति समाप्त किए जाने के लिए दायी होगी ।

(ग) संविदा पर नियुक्त व्यक्ति एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश का हकदार होगा । यह अवकाश एक वर्ष तक संचित किया जा सकेगा । संविदा पर नियुक्त व्यक्ति को किसी भी प्रकार का अन्य कोई अवकाश अनुज्ञात नहीं होगा । वह चिकित्सा प्रतिपूर्ति और एल.टी.सी इत्यादि के लिए भी हकदार नहीं होगा । केवल प्रसूति अवकाश, नियमानुसार दिया जाएगा ।

(घ) नियन्त्रक अधिकारी के अनुमोदन के बिना सेवा से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान (समापन) हो जाएगा । संविदा पर नियुक्त व्यक्ति कर्तव्य (ड्यूटी) से अनुपस्थिति की अवधि के लिए संविदात्मक रकम का हकदार नहीं होगा ।

(ङ) संविदा पर नियुक्त व्यक्ति जिसने तैनाती के एक स्थान पर पांच वर्ष का कार्यकाल पूर्ण कर लिया है, आवश्यकता के आधार पर स्थानान्तरण हेतु पात्र होगा, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो ।

(च) चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्य प्रमाण पत्र प्रस्तुत करना होगा । बारह सप्ताह से अधिक की गर्भवती महिला प्रसव होने तक अस्थाई तौर पर अनुपयुक्त बनी रहेगी । महिला अभ्यर्थियों का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाएगा ।

(छ) संविदा पर नियुक्त व्यक्ति का यदि अपने पदीय कर्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो तो वह उसी दर पर जैसी नियमित प्रतिस्थानी कर्मचारियों को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा ।

(ज) नियमित कर्मचारियों की दशा में यथा लागू सेवा नियमों के उपबन्ध, जैसे एफ0 आर0, एस0आर0, छुट्टी नियम, साधारण भविष्य निधि नियम, पेंशन नियम तथा आचरण नियम आदि संविदा पर नियुक्त व्यक्तियों की दशा में लागू नहीं होंगे। वे इस स्तम्भ में यथावर्णित उपलब्धियों आदि के लिए हकदार होंगे।

16. आरक्षण.—उक्त सेवा में नियुक्ति हिमाचल प्रदेश सरकार द्वारा समय-समय पर अनुसूचित जातियों/अनुसूचित जनजातियों/अन्य पिछड़े वर्गों और अन्य प्रवर्ग के व्यक्तियों के लिए सेवा में आरक्षण की बावत जारी किए आदेशों के अधीन होगी।

17. विभागीय परीक्षा.— लागू नहीं।

18. शिथिल करने की शक्ति.—जहां राज्य सरकार की यह राय हो कि ऐसा करना आवश्यक या समीचीन है, वहां वह, कारणों को लिखित में अभिलिखित करके और हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, आदेश द्वारा, इन नियमों के किन्हीं उपबन्धों को किसी वर्ग या व्यक्तियों के प्रवर्ग या पदों की बावत, शिथिल कर सकेगी।

उपाबन्ध—“ख”

हाउस—कीपर और हिमाचल प्रदेश सरकार के मध्य, सचिव राज्यपाल, हिमाचल प्रदेश के माध्यम से निष्पादित की जाने वाली संविदा/करार का प्ररूपयह करार श्री/श्रीमति.....पुत्र/पुत्री श्री..... निवासीसंविदा पर नियुक्त व्यक्ति (जिसे इसमें इसके पश्चात् “प्रथम पक्षकार” कहा गया है) तथा हिमाचल प्रदेश की राज्यपाल के मध्य, सचिव राज्यपाल हिमाचल प्रदेश (जिसे इसमें इसके पश्चात् “द्वितीय पक्षकार” कहा गया है) के माध्यम से आज तारीख को किया गया।

“द्वितीय पक्षकार” ने उपरोक्त प्रथम पक्षकार को लगाया है और प्रथम पक्षकार ने हाउस—कीपर के रूप में संविदा के आधार पर निम्नलिखित निबन्धन और शर्तों पर सेवा करने के लिए सहमति दी है :-

1. यह कि प्रथम पक्षकार हाउस—कीपर के रूप मेंदिन.....से प्रारम्भ होने और को समाप्त होने वाले दिन तक एक वर्ष की अवधि के लिए द्वितीय पक्षकार की सेवा में रहेंगे। यह विनिर्दिष्ट रूप से उल्लिखित किया गया है और दाने 1^{वें} पक्षकार द्वारा करार पाया गया है कि प्रथम पक्षकार की द्वितीय पक्षकार के साथ संविदा, आखिरी कार्यदिवस को अर्थात्दिन को स्वयंमेव ही पर्यवसित (समाप्त) हो जाएगी और सूचना नोटिस आवश्यक नहीं होगा।
2. प्रथम पक्षकार की संविदात्मक रकम 13500/- रुपए प्रतिमास होगी।
3. प्रथम पक्षकार की सेवा पूर्णतया अस्थाई आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है या यदि उस व्यक्ति के विरुद्ध नियमित पदधारी नियुक्त/तैनात कर दिया जाता है जिसके लिए प्रथम पक्षकार को संविदा पर लगाया गया है तो नियुक्ति पर्यवसित (समाप्त) की जाने के लिए दायी होगी।
4. संविदा पर नियुक्त हाउस—कीपर एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश का हकदार होगा। यह अवकाश एक वर्ष तक संचित किया जा सकेगा। संविदा पर नियुक्त हाउस—कीपर को किसी भी प्रकार का अन्य कोई अवकाश अनुज्ञात नहीं होगा। वह चिकित्सा प्रतिपूर्ति और एल.टी.सी इत्यादि के लिए भी हकदार नहीं होगा/होगी। नियमानुसार केवल प्रसूति अवकाश दिया जाएगा।

5. नियन्त्रक अधिकारी के अनुमोदन के बिना कर्तव्यों से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान (समापन) हो जाएगा। संविदात्मक नियुक्त हाउस-कीपर कर्तव्य (ड्युटी) से अनुपस्थिति की अवधि के लिए संविदात्मक रकम का हकदार नहीं होगा।
6. संविदा पर नियुक्त व्यक्ति जिसने तैनाती के एक स्थान पर पांच वर्ष का कार्यकाल पूर्ण कर लिया है, आवश्यकता के आधार पर स्थानान्तरण हेतु पात्र होगा, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो।
7. चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्य प्रमाण-पत्र प्रस्तुत करना होगा। महिला अभ्यर्थियों की दशा में, बारह सप्ताह से अधिक की गर्भावस्था प्रसव होने तक उस अस्थाई तौर पर अनुपयुक्त बना देगी। महिला अभ्यर्थियों का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाना चाहिए।
8. संविदा पर नियुक्त व्यक्ति का यदि अपने पदीय कर्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर जैसी नियमित प्रतिस्थानी कर्मचारी को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी।
9. संविदा पर नियुक्त व्यक्ति (व्यक्तियों) को सामूहिक जीवन बीमा योजना के साथ-साथ जी.पी. एफ./ई0पी0एफ0 भी लागू नहीं होगा।

इसके साक्ष्यस्वरूप, प्रथम पक्षकार और द्वितीय पक्षकार ने साक्षियों की उपस्थिति में इसमें सर्वप्रथम उल्लिखित तारीख को अपने-अपने हस्ताक्षर कर दिए हैं।

साक्षियों की उपस्थिति में ;

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नाम व पूरा पता।

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(नाम व पूरा पता।

प्रथम पक्षकार के हस्ताक्षर

साक्षियों की उपस्थिति में ;

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नाम व पूरा पता।

2.

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(नाम व पूरा पता।

द्वितीय पक्षकार के हस्ताक्षर

[Authoritative English text of this Department's Notification No. GAB-A(3)-9/2004 Dated 24-6-2010 as required under clause(3) of Article 348 of the Constitution of India].

**GENERAL ADMINISTRATION DEPARTMENT
B-Section**

NOTIFICATION

Shimla-2, the 24th June, 2010

No. GAB-A(3)-9/2004.—In exercise of the powers conferred by proviso to Article 309 of the constitution of India, the Governor, Himachal Pradesh, in consultation with the Himachal Pradesh Public Service Commission, is pleased to make the Recruitment and Promotion Rules for the post of House Keeper, Class-III (Non-Gazetted) in Himachal Pradesh Governor's Secretariat as per Annexure-“A” attached to this notification, namely:

1. Short title and Commencement.—(1) These rules may be called the Himachal Pradesh Governor's Secretariat House Keeper, Class-III (Non- Gazetted) Recruitment and Promotion Rules, 2010.

(2) These rules shall come into force from the date of publication in the Rajpatra, Himachal Pradesh.

By order,
Sd/-
Secretary.

Annexure-A

**RECRUITMENT AND PROMOTION RULES FOR THE POST OF House-Keeper
(CLASS-III, NON-GAZETTED) IN THE GOVERNOR'S SECRETARIAT (HOUSEHOLD)
HIMACHAL PRADESH**

1. **Name of the post.**—House Keeper
2. **Number of posts.**—01 (One)
3. **Classification.**—Class-III (Non-Gazetted)
4. **Scale of Pay.**—(i) **Pay scale for Regular Incumbents:**—Pay band Rs 10300-34800+3200 Grade Pay
- (ii) **Emoluments for contract employees.**—Rs.13500/- per month as per details given in Column No.: 15-A.
5. **Whether Selection post or non-selection post.**—N.A.
6. **Age for direct recruitment .**—Between 18 and 45 years.

Provided that the upper age limit for direct recruits will not be applicable to the candidates already in service of the government including those who have been appointed on adhoc or on contract basis;

Provided further that if a candidate appointed on adhoc or on contract basis had become overage on the date when he was appointed as such he shall not be eligible for any relaxation in the prescribed age-limit by virtue of such adhoc or contract appointment;

Provided further that upper age limit is relaxable for Scheduled Castes/Scheduled Tribes/Other Categories of person to the extent permissible under the general or special order(s) of the Himachal Pradesh Government;

Provided further that the employees of all the Public Sector Corporations and Autonomous Bodies who happened to be government servants before absorption in Public Sector Corporations/Autonomous Bodies at the time of initial constitution of such Corporation/Autonomous Bodies shall be allowed age concession in direct recruitment as admissible to Government Servants. This concession will not, however, be admissible to such staff of the Public Sector Corporations/Autonomous Bodies who were/are subsequently appointed by such Corporation /Autonomous Bodies and who are/were finally absorbed in the service of such Corporations/Autonomous Bodies after initial constitution of the Public Sector Corporations/Autonomous Bodies.

(1) Age limit for direct recruitment will be reckoned on the first day of the year in which the post(s) is/are advertised for inviting applications or notified to the Employment Exchanges or as the case may be.

(2) Age and experience in the case of direct recruitment relaxable at the discretion of the HP Public Service Commission or other Recruiting Authority, as the case may be, in case the candidate is otherwise well qualified.

7. Minimum Educational & other qualifications required for direct recruits.—(a) ESSENTIAL QUALIFICATION.—(i) Should be graduate from Recognized University / Institution.

(ii) One year craft course of Housekeeping from recognized University/ Institution with three years experience as House Keeper.

(b) DESIRABLE QUALIFICATIONS.—Knowledge of customs, manner and dialects of Himachal Pradesh and suitability for appointment in peculiar conditions prevailing in the Himachal Pradesh.

8. Whether age & educational qualifications prescribed for direct recruits will apply in the case of the promotees.—Not Applicable.

9. Period of probation if any.: Two years subject to such further extension for a period not exceeding one year as may be ordered by the competent authority in special circumstances and reasons to be recorded in writing.

10. Method of recruitment whether by direct recruitment or by promotion, deputation, Transfer and the percentage of posts to be filled in by various methods.—100% by direct recruitment on regular basis or on contract basis as the case may be failing both on secondment basis. The Contract employees will get emoluments as given in Col. 15-A and will be governed by service conditions as specified in the said Column.

11. In case of recruitment by promotion, deputation, transfer grade from which promotion/deputation/transfer is to be made.—On secondment basis from amongst the incumbents of this post working in the identical pay scale from other H.P. Government Departments.

12. If a departmental Promotion Committee exists, what is its composition.—Not Applicable.

13. Circumstances under which the H.P.S.C. is to be consulted in making recruitment.—As required under the Law.

14. Essential requirement for a direct recruitment.—A candidate for appointment to any service or post must be citizen of India.

15. Selection for appointment to post by direct recruitment.—Selection for appointment to the post in the case of direct recruitment shall be made on the basis of viva-voce test, if HP Public Service Commission or other recruiting authority, as the case may be, so consider necessary or expedient by a written test or practical test, the standard/syllabus etc. of which will be determined by the Commission/ other recruiting authority, as the case may be.

15-A Selection for appointment for the post by contract appointment.—Notwithstanding anything contained in these rules, contract appointments to the post will be made subject to the terms and conditions given below:-

(1) CONCEPT.— (a) Under the policy the **House Keeper** in the Department of Governor's Secretariat, H.P. will be engaged on contract basis initially for one year, which may be extendable on year to year basis.

(b) POST FALLS OUT OF THE PURVIEW OF HPSSB.— The Secretary to Governor after obtaining the approval of the Government to fill up the vacant posts on contract basis will advertise the vacant posts in atleast two leading News papers and invite applications from candidates having the prescribed qualifications and fulfilling the other eligibility conditions as prescribed in these Rules.

(c) The selection will be made in accordance with the eligibility conditions prescribed in these Rules.

(II) CONTRACTUAL EMOLUMENTS.— The **House Keeper** appointed on contract basis will be paid consolidated fixed contractual amount @ Rs.13500/-per month (which shall be equal to minimum of Pay band + grade pay). An amount equal to 3% of the contractual amount as annual increase for the subsequent year(s) will be allowed if contract is extended beyond one year.

(III) APPOINTING/DISCIPLINARY AUTHORITY.— The Secretary to Governor H.P. will be appointing and disciplinary authority.

(IV) SELECTION PROCESS.—Selection for appointment to the post in the case of Contract Appointment will be made on the basis of viva-voce test or if consider necessary or expedient by a written test or practical test the standard/syllabus etc. of which will be determined by the concerned recruiting agency i.e Secretary to Governor, H.P.

(V) COMMITTEE FOR SELECTION OF CONTRACTUAL APPOINTMENTS.—As may be constituted by the concerned recruiting authority i.e. Secretary to Governor, H.P. from time to time.

(VI) AGREEMENT.—After selection of a candidate, he/she shall sign an agreement as per **Annexure-B** appended to these Rules.

(VII) TERMS & CONDITIONS.—(a) The contract appointee will be paid fixed contractual amount @ Rs.13500/-per month (which shall be equal to the minimum of Pay Band + Grade Pay) The contract appointee will be entitled for increase in contractual amount @ 3% of the minimum of Pay band+ Grade Pay of the post for further extended years and no other allied benefits such as senior/selection scales etc. shall be given.

(b) The service of the Contract Appointee will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found satisfactory.

(c) Contractual appointee will be entitled for one day casual leave after putting one month service. This leave can be accumulated up to one year. No leave of other kind is admissible to the contract appointee. He/she shall not be entitled for medical reimbursement and LTC etc. Only maternity leave will be given as per rules.

(d) Unauthorized absence from the duty without the approval of the controlling officer shall automatically lead to the termination of the contract. Contract appointee shall not be entitled for contractual amount for the period of absence from duty.

(e) Transfer of Contract appointee will be permitted after completion of 5(five) years tenure at one place of posting on need based basis wherever required on administrative grounds.

(f) Selected candidate will have to submit a certificate of his/her fitness from a Government/ Registered Medical Practitioner. Women candidate pregnant beyond 12 weeks will stand temporarily unfit till the confinement is over. The Woman candidate will be re-examined for the fitness from an authorized Medical Officer/Practitioner.

(g) Contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to regular counterpart officials at the minimum of pay scale.

(h) Provisions of service rules like FR SR, Leave Rules, GPF Rules, Pension Rules & Conduct Rules etc. as are applicable in case of regular employees will not be applicable in case of contract appointees. They will be entitled for emoluments etc. as detailed in this column.

16. Reservation.—The appointment to the service shall be subject to orders regarding reservation in the service for Scheduled castes/ Scheduled Tribes /other Backward Classes/Other Categories of persons issued by the Himachal Pradesh Govt. from time to time.

17. Departmental Examination.—Not applicable.

18. Powers to relax.—Where the State Govt. is of the opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing and in consultation with Public Service Commission relax any of the provisions of these Rules with respect to any class or category or persons or posts.

“Annexure-B”

Form of contract/agreement to be executed between the House Keeper and the Government of Himachal Pradesh through Secretary to Governor, Himachal Pradesh.

This agreement is made on this -----day of -----in the year between Shri/Smt.-----S/OD/O Shri -----R/O-----

-----contract appointee (hereinafter called the FIRST PARTY) AND the Governor of Himachal Pradesh through Secretary to Governor, Himachal Pradesh (here-in-after the SECOND PARTY).

Whereas, the SECOND PARTY has engaged the aforesaid FIRST PARTY and the FIRST PARTY has agreed to serve as a **House Keeper** on contract basis on the following terms and conditions:-

1. That the FIRST PARTY shall remain in the service of the SECOND PARTY as a **House Keeper** for a period of one year commencing on day of _____ and ending on the day of _____. It is specifically mentioned and agreed upon by both the parties that the contract of the FIRST PARTY with SECOND PARTY shall ipso-facto stand terminated on the last working day i.e. on _____. And information notice shall not be necessary.

2. The contractual amount of the FIRST PARTY will be Rs. **13500/-** per month.

3. The service of the FIRST PARTY will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found good or if a regular incumbent is appointed/ posted against the vacancy for which the first party was engaged on contract.

4. Contractual **House Keeper** will be entitled for one day casual leave after putting in one month service. This leave can be accumulated upto one year. No leave of any kind is admissible to the contractual **House Keeper**. He will not be entitled for medical reimbursement and LTC etc. Only maternity leave will be given as per rules.

5. Unauthorized absence from the duty without the approval of the controlling Officer shall automatically lead to the termination of the contract. A contractual **House Keeper** will not be entitled for contractual amount for the period of absence from duty.

6. An Official appointed on contract basis who have completed five years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.

7. Selected candidate will have to submit a certificate of his/her fitness from a Government/Registered Medical Practitioner. In case of Women candidates pregnant beyond twelve weeks will render her temporarily unfit till the confinement is over. The women candidate should be re-examined for fitness from an authorized Medical Officer/Practitioner.

8. Contract appointee shall be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to regular counter-part official at the minimum of pay scale.

9. The Employees Group Insurance Scheme as well as EPF/CPF will not be applicable to the contractual appointee(s).

IN WITNESS the FIRST PARTY AND SECOND PARTY have herein to set their hands the day, month and year first, above written.

IN THE PRESENCE OF WITNESS:

1. _____

(Name and full address)
 2. -----

 (Name and Full Address) (Signature of the FIRST PARTY)

IN THE PRESENCE OF WITNESS:

1. -----

 (Name and full address)
 2. -----

 (Name and Full Address) (Signature of the SECOND PARTY)

सामान्य प्रशासन विभाग

ख-अनुभाग

अधिसूचना

शिमला-2, 23-7-2010

सख्या: जी.ए.बी.-ए(3)-3/2004.—हिमाचल प्रदेश की राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश राज्यपाल सचिवालय में बेलदार, वर्ग-IV (अराजपत्रित), के पद के लिए इस अधिसूचना से संलग्न उपाबन्ध-“क” के अनुसार भर्ती और प्रोन्नति नियम बनाती हैं, अर्थात:-

1. संक्षिप्त नाम और प्रारम्भ.—(1) इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश, राज्यपाल सचिवालय बेलदार, वर्ग-IV (अराजपत्रित) भर्ती और प्रोन्नति नियम, 2010 है ।

(2) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होंगे ।

2. निरसन और व्यावृत्तियों.—(1) इस विभाग की सम संख्यांक अधिसूचना तारीख: 4-4-2009 द्वारा अधिसूचित हिमाचल प्रदेश राज्यपाल सचिवालय बेलदार, वर्ग-IV (अराजपत्रित) भर्ती और प्रोन्नति नियम, 2009 का एतद् द्वारा निरसन किया जाता है ।

(2) ऐसे निरसन के होते हुए भी उपर्युक्त उप नियम 2(1) के अधीन इस प्रकार निरसित नियमों के अधीन की गई कोई नियुक्ति, बात या कार्रवाई इन नियमों के अधीन विधिमान्य रूप में की गई समझी जाएगी ।

आदेश द्वारा,
 हस्ता0/-
 सचिव ।

हिमाचल प्रदेश राज्यपाल सचिवालय में बेलदार, वर्ग—IV (अराजपत्रित) के पद के लिए भर्ती और प्रोन्नति नियम ।

1. पद का नाम.— बेलदार ।
2. पदों की संख्या.— 3 (तीन) ।
3. वर्गीकरण.—वर्ग—IV (अराजपत्रित) ।
4. वेतनमान.—(i) नियमित पदधारियों के लिए वेतनमान.—पे बैंड 4900-10680 रुपए के वेतनमान में जमा 1300/— रुपए ग्रेड पे ।

(ii) संविदा पर नियुक्त कर्मचारियों के लिए उपलब्धियां.— 6200/— रुपए प्रतिमास स्तम्भ 15—क में दिए गए ब्यौरे के अनुसार ।

5. चयन पद अथवा अचयन पद.—लागू नहीं ।
6. सीधी भर्ती के लिए आयु—18 और 45

परन्तु सीधे भर्ती किए जाने वाले व्यक्तियों के लिए ऊपरी आयु सीमा तदर्थ या संविदा के आधार पर नियुक्त किए गए व्यक्तियों सहित पहले से ही सरकार की सेवा में रत अभ्यर्थियों पर लागू नहीं होगी :

परन्तु यह और कि यदि तदर्थ या संविदा के आधार पर नियुक्त किया गया अभ्यर्थी, इस रूप में नियुक्ति की तारीख को अधिक आयु का हो गया हो, तो वह तदर्थ या संविदा के आधार पर नियुक्ति के कारण विहित आयु में छूट के लिए पात्र नहीं होगा :

परन्तु यह और कि अनुसूचित जातियों/अनुसूचित जन-जातियों तथा अन्य वर्गों के व्यक्तियों के लिए उपरी आयु सीमा में ऊतनी ही छूट दी जा सकेगी, जितनी हिमाचल प्रदेश सरकार के साधारण या विशेष आदेशों के अधीन अनुज्ञेय है: परन्तु यह और भी कि पब्लिक सेक्टर निगमों तथा स्वायत्त निकायों के सभी कर्मचारियों को, जो ऐसे पब्लिक सेक्टर निगमों/स्वायत्त निकायों के प्रारम्भिक गठन के समय ऐसे पब्लिक सेक्टर निगमों/स्वायत्त निकायों में आमेसन से पूर्व सरकारी कर्मचारी थे, सीधी भर्ती में आयु की सीमा में ऐसी ही रियायत दी जाएगी, जैसी सरकारी कर्मचारियों को अनुज्ञेय है, किन्तु इस प्रकार की रियायत पब्लिक सेक्टर, निगमों तथा स्वायत्त निकायों के ऐसे कर्मचारिवृन्द को नहीं दी जाएगी, जो पश्चातवर्ती ऐसे निगमों/स्वायत्त निकायों द्वारा नियुक्त किए गए थे/ किए गए हैं और उन पब्लिक सेक्टर निगमों/स्वायत्त निकायों के प्रारम्भिक गठन के पश्चात ऐसे निगमों/स्वायत्त निकायों की सेवा में अन्तिम रूप से आमेलित किए गए हैं/किए गए थे ।

(1) सीधी भर्ती के लिए आयु सीमा की गणना, उस वर्ष के प्रथम दिवस से की जाएगी जिसमें कि पद (पदों) को, आवेदन आमन्त्रित करने के लिए यथास्थिति, विज्ञापित किया गया है या नियोजनालयों को अधिसूचित किया गया है ।

(2) अन्यथा सुअर्हित अभ्यर्थियों की दशा में सीधी भर्ती के लिए आयु सीमा और अनुभव भर्ती अभिकरण के विवेकानुसार शिथिल किया जा सकेगा ।

7. सीधे भर्ती किए जाने वाले व्यक्तियों के लिए अपेक्षित न्यूनतम शैक्षिक और अन्य अर्हताएं.—(क) अनिवार्य अर्हता:—किसी मान्यता प्राप्त स्कूल शिक्षा बोर्ड/संस्थान से आठवीं पास होना चाहिए या इसके समतुल्य ।

(ख) **वांछनीय अर्हता.**—हिमाचल प्रदेश की रूढ़ियों, रीतियों और बोलियों का ज्ञान और प्रदेश में विद्यमान विशिष्ट दशाओं में नियुक्ति के लिए उपयुक्तता ।

8. **सीधे भर्ती किए जाने वाले व्यक्तियों के लिए विहित आयु और शैक्षिक अर्हताएं प्रोन्नत व्यक्तियों की दशा में लागू होगी या नहीं.**— लागू नहीं ।

9. **परिवीक्षा की अवधि यदि कोई हो.**—दो वर्ष, जिसका एक वर्ष से अनधिक ऐसी और अवधि के लिए विस्तार किया जा सकेगा, जैसा सक्षम प्राधिकारी विशेष परिस्थितियों में, और लिखित कारणों से आदेश दें ।

10. **भर्ती की पद्धति, भर्ती सीधी होगी, प्रोन्नति, प्रतिनियुक्ति, स्थानान्तरण द्वारा और विभिन्न पद्धतियों द्वारा भरे जाने वाले पदों की प्रतिशतता.**—शतप्रतिशत सीधी भर्ती द्वारा यथास्थिति, नियमित आधार पर या संविदा के आधार पर भर्ती द्वारा । संविदा पर नियुक्त कर्मचारी स्तम्भ संख्या: 15—क में दी गई उपलब्धियां प्राप्त करेंगे और तथाकथित स्तम्भ में यथाविनिर्दिष्ट सेवा शर्तों द्वारा विनियमित होंगे ।

11. **प्रोन्नति, प्रतिनियुक्ति या स्थानान्तरण की दशा में श्रेणियां, जिनसे प्रोन्नति प्रतिनियुक्ति, स्थानान्तरण किया जाएगा—लागू नहीं ।**

12. **यदि विभागीय प्रोन्नति समिति विद्यमान हो तो उसकी संरचना.**—लागू नहीं ।

13. **भर्ती करने में जिन परिस्थितियों में हिमाचल प्रदेश लोक सेवा आयोग से परामर्श किया जायेगा.**—जैसा विधि द्वारा अपेक्षित है ।

14. **सीधी भर्ती के लिए अनिवार्य अपेक्षा.**—किसी सेवा या पद नियुक्ति के लिए अभ्यर्थी का भारत का नागरिक होना आवश्यक है ।

15. **सीधी भर्ती द्वारा पद पर नियुक्ति के लिए चयन.**—सीधी भर्ती के मामले में पद पर नियुक्ति के लिए चयन मौखिक परीक्षा के आधार पर होगा, यदि भर्ती प्राधिकारी ऐसा करना आवश्यक या समीचीन, समझे, तो लिखित परीक्षा या व्यावहारिक परीक्षा के आधार पर किया जाएगा जिसका स्तर/पाठ्यक्रम इत्यादि भर्ती प्राधिकारी द्वारा अवधारित किया जाएगा

15—क. **संविदा के आधार पर नियुक्ति के लिए पद पर चयन.**—इन नियमों में किसी बात के होते हुए भी, पद पर संविदा नियुक्तियों नीचे दिए गए निबन्धों और शर्तों के अधीन की जाएगी:—

I. संकल्पना.— (क) इस पालिसी के अधीन हिमाचल प्रदेश राज्यपाल सचिवालय में बेलदार को संविदा के आधार पर प्रारम्भ में एक वर्ष के लिए लगाया जाएगा, जिसे वर्षानुवर्ष आधार पर आगे बढ़ाया जा सकेगा ।

(ख) **पद का हिमाचल प्रदेश अधीनस्थ सेवाएं चयन बोर्ड के कार्यक्षेत्र से बाहर होना.**—सचिव, राज्यपाल, हिमाचल प्रदेश रिक्त पदों को संविदा के आधार पर भरने के लिए सरकार का अनुमोदन प्राप्त करने के पश्चात रिक्त पदों के ब्यौरे, कम से कम दो अग्रणी समाचार पत्रों में विज्ञापित करवाएगा और इन नियमों में यथाविहित शैक्षिक अर्हताएं और अन्य पात्रता शर्तों को पूरा करने वाले अभ्यर्थियों से आवेदन आमंत्रित करेगा ।

(ग) चयन इन नियमों में विहित पात्रता शर्तों के अनुसार किया जाएगा ।

II. संविदात्मक उपलब्धियां.—संविदा के आधार पर नियुक्त बेलदार को 6200/—रूपए की समेकित नियत संविदात्मक रकम (जो पे बैंड के न्यूनतम जमा ग्रेड पे के बराबर होगी) प्रतिमास संदत्त की जाएगी । यदि संविदा में एक वर्ष से अधिक की बढ़ौतरी की जाती है तो पश्चातवर्ती वर्ष (वर्षों) के लिए संविदात्मक उपलब्धियों में पद के पे बैंड के न्यूनतम जमा ग्रेड पे का तीन प्रतिशत के बराबर की रकम वार्षिक वृद्धि के रूप में अनुज्ञात की जाएगी ।

III. नियुक्ति/अनुशासन प्राधिकारी.—सचिव, राज्यपाल, हिमाचल प्रदेश, नियुक्ति और अनुशासन प्राधिकारी होगा ।

IV. चयन प्रक्रिया.—संविदा नियुक्ति की दशा में पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा । यदि आवश्यक या समीचीन समझा जाए तो लिखित परीक्षा या व्यावहारिक परीक्षा के आधार पर किया जाएगा, जिसका स्तर/पाठ्यक्रम इत्यादि सम्बद्ध भर्ती प्राधिकारी अर्थात् सचिव, राज्यपाल द्वारा अवधारित किया जाएगा ।

V. संविदात्मक नियुक्तियों के लिए चयन समिति.—जैसी सम्बद्ध भर्ती अभिकरण अर्थात् सचिव, राज्यपाल द्वारा समय-समय पर गठित की जाए ।

VI. करार.—अभ्यर्थी को, चयन के पश्चात् इन नियमों से संलग्न उपाबन्ध "ख" के अनुसार करार हस्ताक्षरित करना होगा ।

VII. निबन्धन और शर्तें.—(क) संविदा के आधार पर नियुक्त व्यक्ति को 6200/—रुपए की नियत संविदात्मक रकम प्रतिमास संदत्त की जाएगी (जो पे बैंड के न्यूनतम जमा ग्रेड पे के बराबर होगी)। संविदा पर नियुक्त व्यक्ति आगे बढ़ाए गए वर्ष / वर्षों के लिए संविदात्मक रकम में पद के पे बैंड के न्यूनतम जमा ग्रेड पे का तीन प्रतिशत के बराबर वार्षिक वृद्धि का हकदार होगा और अन्य कोई सहबद्ध प्रसुविधाएं, जैसे वरिष्ठ/चयन वेतनमान आदि नहीं दिया जाएगा ।

(ख) संविदा पर नियुक्त व्यक्ति की सेवा पूर्णतया अस्थाई आधार पर होगी । यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है, तो नियुक्ति समाप्त किए जाने के लिए दायी होगी ।

(ग) संविदा पर नियुक्त व्यक्ति एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश का हकदार होगा । यह अवकाश एक वर्ष तक संचित किया जा सकेगा । संविदा पर नियुक्त व्यक्ति को किसी भी प्रकार का अन्य कोई अवकाश अनुज्ञात नहीं होगा । वह चिकित्सा प्रतिपूर्ति और एल.टी.सी इत्यादि के लिए भी हकदार नहीं होगा । केवल प्रसूति अवकाश, नियमानुसार दिया जाएगा ।

(घ) नियन्त्रक अधिकारी के अनुमोदन के बिना सेवा से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान (समापन) हो जाएगा । संविदा पर नियुक्त व्यक्ति कर्त्तव्य (ड्यूटी) से अनुपस्थिति की अवधि के लिए भी संविदात्मक रकम का हकदार नहीं होगा ।

(ङ) संविदा पर नियुक्त कर्मचारी, जिसने तैनाती के एक स्थान पर पांच वर्ष का कार्यकाल पूर्ण कर लिया है, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो, आवश्यकता के आधार पर स्थानान्तरण हेतु पात्र होगा ।

(च) चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्य प्रमाण पत्र प्रस्तुत करना होगा । बारह सप्ताह से अधिक गर्भवती महिला प्रसव होने तक अस्थाई तौर पर अनुपयुक्त बनी रहेगी । महिला अभ्यर्थी का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाएगा ।

(छ) संविदा पर नियुक्त व्यक्ति का यदि अपने पदीय कर्त्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर जैसी नियमित प्रतिस्थानी कर्मचारियों को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा ।

(ज) नियमित कर्मचारियों की दशा में यथा लागू सेवा नियमों के उपबन्ध, जैसे एफ0आर0' एस0आर0, छुट्टी नियम, साधारण भविष्य निधि नियम, पेंशन नियम तथा आचरण नियम आदि संविदा पर नियुक्त व्यक्तियों की दशा में लागू नहीं होंगे । वे इस स्तम्भ में यथावर्णित उपलब्धियों आदि के लिए हकदार होंगे ।

16. आरक्षण.—सेवा में नियुक्ति, हिमाचल प्रदेश सरकार द्वारा समय-समय पर अनुसूचित जातियों/अनुसूचित जन-जातियों/अन्य पिछड़ जाति वर्गों और अन्य प्रवर्ग के व्यक्तियों के लिए सेवा में आरक्षण की बावत जारी किए गए आदेशों के, अधीन होगी ।

17. विभागीय परीक्षा.—लागू नहीं ।

18. शिथिल करने की शक्ति.—जहां राज्य सरकार की यह राय हो कि ऐसा करना आवश्यक या समीचीन है, वहां वह, कारणों को लिखित में अभिलिखित करके, आदेश द्वारा, इन नियमों, के किन्हीं उपबन्धों को किसी वर्ग या व्यक्तियों के प्रवर्ग या पदों की बावत, शिथिल कर सकेगी ।

उपाबन्ध—“ख”

बेलदार और हिमाचल प्रदेश सरकार के मध्य, सचिव राज्यपाल, हिमाचल प्रदेश के माध्यम से निष्पादित की जाने वाली संविदा/करार का प्ररूप ।

यह करार श्री/श्रीमति.....पुत्र/पुत्री श्रीनिवासीसंविदा पर नियुक्त व्यक्ति (जिसे इसमें इसके पश्चात् प्रथम पक्षकार कहा गया है) और हिमाचल प्रदेश की राज्यपाल के मध्य, सचिव राज्यपाल हिमाचल प्रदेश (जिसे इसमें इसके पश्चात् द्वितीय पक्षकार कहा गया है) के माध्यम से आज तारीख कोकिया गया ।

द्वितीय पक्षकार ने उपरोक्त प्रथम पक्षकार को लगाया है और प्रथम पक्षकार ने बेलदार के रूप में संविदा के आधार पर निम्नलिखित निबन्धन और शर्तों पर सेवा करने के लिए सहमति दी है :—

1. यह कि प्रथम पक्षकार बेलदार के रूप मेंसे प्रारम्भ होने और को समाप्त होने वाले दिन तक एक वर्ष की अवधि के लिए द्वितीय पक्षकार की सेवा में रहेगा । यह विनिर्दिष्ट रूप से उल्लिखित किया गया है और दोनों पक्षकारों द्वारा करार पाया गया है कि प्रथम पक्षकार की द्वितीय पक्षकार के साथ संविदा, आखिरी कार्यदिवस को अर्थात् दिन को स्वयंमेव ही पर्यवसित (समाप्त) समझी जाएगी तथा सूचना नोटिस आवश्यक नहीं होगा ।
2. प्रथम पक्षकार की संविदात्मक रकम 6200/— रुपए प्रतिमास होगी ।
3. प्रथम पक्षकार की सेवा पूर्णतया अस्थायी आधार पर होगी । यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है या यदि नियमित पदधारी उस रिक्ति के विरुद्ध नियुक्त/तैनात कर दिया जाता है, जिसके लिए प्रथम पक्षकार को संविदा पर लगाया गया है, तो नियुक्ति पर्यवसित (समाप्त) की जाने के लिए दायी होगी ।
4. संविदात्मक नियुक्ति, किसी भी दशा में सेवा में, पदधारी नियमितीकरण के लिए को कोई अधिकार प्रदान नहीं करेगी ।
5. संविदा पर नियुक्त बेलदार एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश का हकदार होगा । यह अवकाश एक वर्ष तक संचित किया जा सकेगा । संविदा पर नियुक्त बेलदार को किसी भी प्रकार का अन्य कोई अवकाश अनुज्ञात नहीं होगा । वह चिकित्सा प्रतिपूर्ति और एल.टी.सी. इत्यादि के लिए भी हकदार नहीं होगा/होगी। केवल प्रसूति अवकाश नियमानुसार दिया जाएगा ।
6. नियन्त्रक अधिकारी के अनुमोदन के बिना कर्तव्यों से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यवसान (समापन) हो जाएगा । संविदात्मक नियुक्त बेलदार कर्तव्य (ड्युटी) से अनुपस्थिति की अवधि के लिए संविदात्मक रकम लेने का हकदार नहीं होगा ।

7. संविदा पर नियुक्त व्यक्ति जिसने तैनाती के एक स्थान पर पांच वर्ष का कार्यकाल पूर्ण कर लिया है, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो, आवश्यकता के आधार पर स्थानान्तरण हेतु पात्र होगा ।
8. चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्य प्रमाण-पत्र प्रस्तुत करना होगा । महिला अभ्यर्थियों की दशा में, बारह सप्ताह से अधिक की गर्भावस्था प्रसव होने तक उसे अस्थाई तौर पर अनुपयुक्त बना देगी । महिला अभ्यर्थियों का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाना चाहिए ।
9. संविदा पर नियुक्त व्यक्ति का यदि अपने पदीय कर्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर जैसी नियमित प्रतिस्थानी कर्मचारी को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/ दैनिक भत्ते का हकदार होगा/होगी ।
10. संविदा पर नियुक्त व्यक्ति (व्यक्तियों) को सामूहिक बीमा योजना के साथ-साथ जीपी.एफ./ई0पी0एफ0 भी लागू नहीं होगा । इसके साक्ष्यस्वरूप, प्रथम पक्षकार और द्वितीय पक्षकार ने साक्षियों की उपस्थिति में इसमें सर्वप्रथम उल्लिखित तारीख को अपने-अपने हस्ताक्षर कर दिए हैं ।

साक्षियों की उपस्थिति में:

1.
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नाम व पूरा पता ।

2.
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(नाम व पूरा पता ।

प्रथम पक्षकार के हस्ताक्षर

साक्षियों की उपस्थिति में :

1.
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नाम व पूरा पता ।

2.
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(नाम व पूरा पता ।

द्वितीय पक्षकार के हस्ताक्षर

[Authoritative English text of this Department's Notification No. GAB-A(3)-3/2004 Dated 23-7-2010 as required under clause(3) of Article 348 of the Constitution of India].

GENERAL ADMINISTRATION DEPARTMENT B-Section

NOTIFICATION

Shimla-2, 23-7-2010

No. GAB-A(3)-3/2004.— In exercise of the powers conferred by proviso to Article 309 of the constitution of India, the Governor, Himachal Pradesh, is pleased to make the following

Recruitment and Promotion Rules for the post of Beldar, Class-IV (Non-Gazetted) in Himachal Pradesh Governor's Secretariat as per Annexure "A" attached to this notification namely:

1. Short title and Commencement.—These rules may be called the Himachal Pradesh, Governor's Secretariat Beldar, Class-IV (Non-Gazetted) Recruitment and Promotion Rules, 2010.

(2) These rules shall come into force from the date of publication in the Rajpatra, Himachal Pradesh.

2. Repeal and Savings.—(1) The Himachal Pradesh Governor's Secretariat Beldar, Class-IV (Non-Gazetted) Recruitment and Promotion Rules 2009 notified vide this Department's Notification of even number Dated:4-4-2009 are hereby repealed.

(2) Notwithstanding such repeal, any appointment made or anything done or any action taken under the rules so repealed under sub rule 2(1) supra shall be deemed to have been made validly under these Rules.

By Order,
Sd/-
Secretary.

Annexure-"A"

RECRUITMENT AND PROMOTION RULES FOR THE POST OF BELDAR CLASS-IV (NON-GAZETTED) IN THE GOVERNOR'S SECRETARIAT (HOUSEHOLD) HIMACHAL PRADESH.

1. **Name of the post.**—Beldar.
2. **Number of posts.**—3 (Three).
3. **Classification.**—Class-IV (Non-Gazetted).
4. **Scale of Pay.**—(i) **Pay Scale for Regular Incumbents.**—Pay Band in the Scale of Rs.4900-10680 + Rs.1300 as Grade Pay.
(ii) **Emoluments for Contract employees.**—Rs 6200/- per month as per details given in Col. 15-A.
5. **Whether Selection post or non-selection post.**—N.A.
6. **Age for direct recruitment.**—Between 18 & 45 years. Provided that the upper age limit for direct recruits will not be applicable to the candidates already in service of the government including those who have been appointed on adhoc or on contract basis:

Provided further that if a candidate appointed on adhoc basis had become overage on the date when he was appointed as such he shall not be eligible for any relaxation in the prescribed age-limit by virtue of his adhoc or contract appointment.

Provided further that upper age limit is relax- able for Scheduled Castes/Scheduled Tribes/Other Categories of person to the extent permissible under the general or special order(s) of the Himachal Pradesh Government.

Provided further that employees of all the Public Sector Corporations and Autonomous Bodies who happened to be government servants before absorption in Public Sector Corporations/ Autonomous Bodies at the time of initial constitution of such Corporation/Autonomous Bodies shall be allowed age concession in direct recruitment as admissible to government servants. This concession will not, however, be admissible to such staff of the Public Sector Corporations/ Autonomous Bodies who were/are subsequently appointed by such Corporation /Autonomous Bodies and who are/were finally absorbed in the service of such Corporations/Autonomous Bodies after initial constitution of the Public Sector Corporations/Autonomous Bodies.

(3) Age limit for direct recruitment will be reckoned on the first day of the year in which the post(s) is/are advertised for inviting applications or notified to the Employment Exchange.

(4) Age and experience in the case of direct recruitment relax-able at the discretion of the recruiting agency in case the candidate is otherwise well qualified.

7. Minimum Educational & other qualifications required for direct recruits.—(a) ESSENTIAL QUALIFICATION.—Should be middle pass or its equivalent from a recognized Board of School Education /Institution.

(b) DESIRABLE QUALIFICATION.—Knowledge of customs, manner and dialects of Himachal Pradesh and suitability for appointment in peculiar conditions prevailing in the Himachal Pradesh.

8. Whether age & educational qualifications prescribed for direct recruits will apply in the case of the promotees.—Not Applicable.

9. Period of probation if any.—Two years subject to such further extension for a period not exceeding one year as may be ordered by the competent authority in special circumstances and reasons to be recorded in writing.

10. Method of recruitment whether by direct recruitment or by promotion, deputation, Transfer and the percentage of posts to be filled in by various methods.— 100% by direct recruitment on regular basis or recruitment on contract basis as the case may be . The contract employees will get emoluments as given in Col. 15-A and will be governed by service conditions as specified in the said column.

11. In case of recruitment by promotion, deputation, transfer grade from which promotion/ deputation/transfer is to be made.—N.A.

12. If a departmental Promotion Committee exists, what is its composition.—N.A.

13. Circumstances under which the H.P.P.S.C. is to be consulted in making recruitment.—As required under the Law.

14. Essential requirement for a direct recruitment.—A candidate for appointment to any service or post must be citizen of India.

15. Selection for appointment to post by direct recruitment.—Selection for appointment to the post in the case of direct recruitment shall be made on the basis of viva-voce test if the recruiting Authority, so consider necessary or expedient by a written test or practical test, the standard /syllabus etc. of which will be determined by the recruiting Authority.

15-A Selection for appointment for the post by contract appointment.— Notwithstanding anything contained in these rules, contract appointments to the post will be made subject to the terms and conditions given below:-

(I) CONCEPT.— (a) Under the policy the **Beldar** in the Department of Governor's Secretariat, H.P. will be engaged on contract basis initially for one year, which may be extendable on year to year basis.

(b) **POST FALLS OUT OF THE PURVIEW OF HPSSB.—**The Secretary to Governor H.P. after obtaining the approval of the Government to fill up the posts on contract basis will advertise the details of the vacant posts in atleast two leading News papers and invite applications from candidates having the prescribed qualifications and fulfilling the other eligibility conditions as prescribed in these Rules.

(c) The selection will be made in accordance with the eligibility conditions prescribed in these Rules.

(II) CONTRACTUAL EMOLUMENTS.— The **Beldar** appointed on contract basis will be paid consolidated fixed contractual amount @ Rs.6200/-per month (which shall be equal to minimum of Pay band + grade pay). An amount equal to 3% of the minimum of Pay band + grade pay of the post as annual increase in the contractual emoluments for the subsequent year(s) will be allowed if contract is extended beyond one year.

(III) APPOINTING / DISCIPLINARY AUTHORITY.—The Secretary to Governor H.P. will be appointing and disciplinary authority.

(IV) SELECTION PROCESS.—Selection for appointment to the post in the case of Contract Appointment will be made on the basis of viva-voce test or if consider necessary or expedient by a written test or practical test the standard/syllabus etc. of which will be determined by the concerned recruiting authority i.e Secretary to Governor.

(V) COMMITTEE FOR SELECTION OF CONTRACTUAL APPOINTMENTS.— As may be constituted by the concerned recruiting agency i.e. Secretary to Governor from time to time.

(VI) AGREEMENT.—After selection of a candidate, he/she shall sign an agreement as per **Annexure-B** appended to these Rules.

(VII) TERMS & CONDITIONS.— (a) The contractual appointee will be paid fixed contractual amount @ Rs.6200/-per month(which is equal to the minimum of Pay Band + Grade Pay) The contract appointee will be entitled for increase in contractual amount @ 3% of the minimum of Pay band+ Grade Pay of the post for further extended years and no other allied benefits such as senior / selection scales etc. shall be given.

(b) The service of the Contract Appointee will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found satisfactory.

(c) Contract Appointee will be entitled for one day casual leave after putting one month service. This leave can be accumulated up to one year. No leave of other kind is admissible to the contract appointee. He/she shall not be entitled for medical reimbursement and LTC etc. Only maternity leave will be given as per rules.

(d) Unauthorized absence from the duty without the approval of the controlling officer shall automatically lead to the termination of the contract. Contract Appointee shall not be entitled for contractual amount for the period of absence from duty.

(e) An Official appointed on contract basis who have completed five years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.

(f) Selected candidate will have to submit a certificate of his/her fitness from a Government/ Registered Medical Practitioner. Woman candidate pregnant beyond 12 weeks will stand temporarily unfit till the confinement is over. The Woman candidates will be re-examined for the fitness from an authorized Medical Officer/Practitioner.

(g) Contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to regular counterpart officials at the minimum of pay scale.

(h) Provisions of service rules like FR SR, Leave Rules, GPF Rules, Pension Rules & Conduct Rules etc. as are applicable in case of regular employees will not be applicable in case of contract appointees. They will be entitled for emoluments etc. as detailed in this Column.

16. Reservation.—The appointment to the service shall be subject to orders regarding reservation in the service for Scheduled castes/ Scheduled Tribes /other Backward Classes/Other Categories of persons issued by the Himachal Pradesh Govt. from time to time.

17. Departmental Examination.—Not applicable.

18. Powers to relax.—Where the State Govt. is of the opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing and relax any of the provisions of these Rules with respect to any class or category or persons or posts.

Annexure-B

Form of contract/agreement to be executed between the **Beldar** and the Government of Himachal Pradesh through Secretary to Governor, Himachal Pradesh. This agreement is made on this -----day of -----in the year between Shri/Smt.-----S/OD/O Shri -----R/O-----contract appointee (hereinafter called the FIRST PARTY) AND the Governor of Himachal Pradesh through Secretary to Governor, Himachal Pradesh (hereinafter called the SECOND PARTY). Whereas the SECOND PARTY has engaged the aforesaid FIRST PARTY and the FIRST PARTY has agreed to serve as a Beldar on contract basis on the following terms and conditions:-

1. That the FIRST PARTY shall remain in the service of the SECOND PARTY as a **Beldar** for a period of one year commencing on day of and the ending on the day of ----- . It is specifically mentioned and agreed upon by both the parties that the contract of the FIRST PARTY with SECOND PARTY shall ipso-facto stand terminated on the last working day i.e. on -----And information notice shall not be necessary.
2. The contractual amount of the FIRST PARTY will be Rs. **6200/-** per month.

3. The service of the FIRST PARTY will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found good or if a regular incumbent is appointed /posted against the vacancy for which the first party was engaged on contract.
4. The contractual appointment shall not confer any right to incumbent for the regularization of service at any stage.
5. Contractual **Beldar** will be entitled for one day casual leave after putting in one month service. This leave can be accumulated upto one year. No leave of any kind is admissible to the contractual **Beldar** He will not be entitled for medical reimbursement and LTC etc. Only maternity leave will be given as per rules.
6. Unauthorized absence from the duty without the approval of the controlling Officer shall automatically lead to the termination of the contract. A contractual **Beldar** will not be entitled for contractual amount for the period of absence from duty.
7. An Official appointed on contract basis who have completed five years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.
8. Selected candidate will have to submit a certificate of his/her fitness from a Government/Registered Medical Practitioner. In case of Women candidates pregnant beyond twelve weeks will render her temporarily unfit till the confinement is over. The women candidate should be re-examined for fitness from an authorized Medical Officer/Practitioner.
9. Contract appointee shall be entitled to TA/DA if required to go on tour in connection with his official duties at the same rate as applicable to regular counterpart official at the minimum of pay scale.
10. The Employees Group Insurance Scheme as well as EPF/GPF will not be applicable to the contractual appointee(s).

IN WITNESS the FIRST PARTY AND SECOND PARTY has herein to set their hands the day, month and year first, above written.

IN THE PRESENCE OF WITNESS:

1. _____

 (Name and full address)

2. _____

 (Name and Full Address)

(Signature of the FIRST PARTY)

IN THE PRESENCE OF WITNESS:

1. _____

2.

(Name and full address)

(Name and Full Address)

(Signature of the SECONDPARTY)

**सामान्य प्रशासन विभाग
ख-अनुभाग**

अधिसूचना

शिमला-2, 29 जून, 2010

सख्या जी.ए.बी.-ए(3)-1/2004.—हिमाचल प्रदेश की राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश राज्यपाल सचिवालय (गृहकक्ष) में धोबियों का मेट, वर्ग-IV (अराजपत्रित) के पद के लिए इस अधिसूचना से संलग्न उपाबन्ध-“क” के अनुसार भर्ती और प्रोन्नति नियम बनाती हैं, अर्थात्:-

1. संक्षिप्त नाम और प्रारम्भ.—इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश राज्यपाल सचिवालय (गृहकक्ष) में धोबियों का मेट, वर्ग-IV (अराजपत्रित) भर्ती और प्रोन्नति नियम, 2010 है ।

(2) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होंगे ।

2. निरसन और व्यावृत्तियां.—(1) इस विभाग की सम संख्यक अधिसूचना, तारीख 24-3-2009 द्वारा अधिसूचित हिमाचल प्रदेश राज्यपाल सचिवालय (गृहकक्ष) में धोबी मेट वर्ग-IV (अराजपत्रित) भर्ती और प्रोन्नति नियम, 2009 का एतद् द्वारा निरसन किया जाता है ।

(2) ऐसे निरसन के होते हुए भी उपर्युक्त उप नियम 2 (1) के अधीन इस प्रकार निरसित नियमों के अधीन की गई कोई नियुक्ति, बात या कार्रवाई, इन नियमों के अधीन विधिमान्य रूप में की गई समझी जाएगी ।

आदेश द्वारा,
हस्ताक्षरित/—
सचिव ।

“उपाबन्ध-क”

हिमाचल प्रदेश राज्यपाल सचिवालय (गृहकक्ष) में धोबियों का मेट, वर्ग-IV (अराजपत्रित), पद के लिए भर्ती और प्रोन्नति नियम

1. पद का नाम.—धोबियों का मेट

2. पदों की संख्या.—1 (एक)

3. वर्गीकरण.—वर्ग-IV (अराजपत्रित)

4. वेतनमान.—(i) नियमित पदधारियों के लिए वेतनमान.—पे बैंड 4900-10680 रुपए के वेतनमान में जमा 1300/— रुपए ग्रेड पे ।

(ii) **संविदा पर नियुक्त कर्मचारियों के लिए उपलब्धियाँ.**—6200/— रुपए प्रतिमास स्तम्भ 15—क में दिए गए ब्यौरे के अनुसार ।

5 चयन पद अथवा अचयन पद.—लागू नहीं ।

6. सीधी भर्ती के लिए आयु.—18 और 45 वर्ष

परन्तु सीधे भर्ती किए जाने वाले व्यक्तियों के लिए ऊपरी आयु सीमा, तदर्थ या संविदा के आधार पर नियुक्त किए गए पहले से ही सरकार की सेवा में रत अभ्यर्थियों को लागू नहीं होगी ।

परन्तु यह और कि यदि तदर्थ आधार पर नियुक्त किया गया अभ्यर्थी, इस रूप में नियुक्ति की तारीख को अधिक आयु का हो गया हो, तो वह तदर्थ या संविदा के आधार पर नियुक्ति के कारण विहित आयु में छूट के लिए पात्र नहीं होगा :

परन्तु यह और कि अनुसूचित जातियों/अनुसूचित जन-जातियों तथा अन्य वर्गों के व्यक्तियों के लिए ऊपरी आयु सीमा में उतनी ही छूट दी जा सकेगी, जितनी हिमाचल प्रदेश सरकार के साधारण या विशेष आदेशों के अधीन अनुज्ञे है:

परन्तु यह आरै भी कि पब्लिक सैक्टर निगमों तथा स्वायत्त निकायों के सभी कर्मचारियों को, जो ऐसे पब्लिक सैक्टर निगमों/स्वायत्त निकायों के प्रारम्भिक गठन के समय ऐसे पब्लिक सैक्टर निगमों/स्वायत्त निकायों में आमेदन से पूर्व सरकारी कर्मचारी थे, सीधी भर्ती में आयु की सीमा में ऐसी ही रियायत दी जाएगी जैसी सरकारी कर्मचारियों को अनुज्ञेय है, किन्तु इस प्रकार की रियायत पब्लिक सैक्टर निगमों तथा स्वायत्त निकायों के ऐसे कर्मचारीवृन्द को नहीं दी जाएगी जो पश्चात्पूर्वी ऐसे निगमों/स्वायत्त निकायों द्वारा नियुक्त किए गए थे/किए गए हैं और उन पब्लिक सैक्टर निगमों/स्वायत्त निकायों के प्रारम्भिक गठन के पश्चात् ऐसे निगमों/स्वायत्त निकायों की सेवा में अन्तिम रूप से आमेदित किए गए हैं/किए गए थे ।

(1) सीधी भर्ती के लिए आयु सीमा की गणना, उस वर्ष के प्रथम दिवस से की जाएगी जिसमें पद (पदों) को, यथास्थिति, आवेदन आमन्त्रित करने के लिए विज्ञापित किया गया है या नियोजनलयों को अधिसूचित किया गया है ।

(2) अन्यथा सुअर्हित अभ्यर्थियों की दशा में सीधी भर्ती के लिए आयु सीमा और अनुभव भर्ती अभिकरण के विवेकानुसार शिथिल किया जा सकेगा ।

7. सीधे भर्ती किए जाने वाले व्यक्तियों के लिए अपेक्षित न्यूनतम शैक्षिक और अन्य अर्हताएं.—
(क) **अनिवार्य अर्हताएं.**—1. किसी मान्यता प्राप्त स्कूल शिक्षा बोर्ड/संस्थान से आठवीं पास होना चाहिए ।

2. वस्त्र धोने के लिये डिटर्जेंट आदि का ज्ञान होना चाहिए ।

(ख) **वांछनीय अर्हता.**—हिमाचल प्रदेश की रुढ़ियों, रीतियों और बोलियों का ज्ञान और प्रदेश में विद्यमान विशिष्ट दशाओं में नियुक्ति के लिए उपयुक्तता ।

8. सीधे भर्ती किए जाने वाले व्यक्तियों के लिए विहित आयु और शैक्षिक अर्हताएं प्रोन्नत व्यक्तियों की दशा में लागू होगी या नहीं.—लागू नहीं ।

9. परीक्षा की अवधि यदि कोई हो.—दो वर्ष, जिसका एक वर्ष से अनधिक ऐसी और अवधि के लिए विस्तार किया जा सकेगा, जैसा सक्षम प्राधिकारी विशेष परिस्थितियों में, और लिखित कारणों से आदेश दें ।

10. भर्ती की पद्धति.—भर्ती सीधी होगी, प्रोन्नति, प्रतिनियुक्ति, स्थानान्तरण द्वारा और विभिन्न पद्धतियों द्वारा भरे जाने वाले पदों की प्रतिशतता.—शतप्रतिशत सीधी भर्ती द्वारा यथास्थिति, नियमित आधार

पर या संविदा के आधार पर भर्ती द्वारा । संविदा के आधार पर, नियुक्त कर्मचारी स्तम्भ संख्या 15—क में दी गई उपलब्धियां प्राप्त करेंगे और तथाकथित स्तम्भ में विनिर्दिष्ट सेवा शर्तों द्वारा विनियमित होंगे ।

11. प्रोन्नति, प्रतिनियुक्ति या स्थानान्तरण की दशा में श्रेणियां, जिनसे प्रोन्नति प्रतिनियुक्ति, स्थानान्तरण किया जाएगा.—लागू नहीं ।

12. यदि विभागीय प्रोन्नति समिति विद्यमान हो तो उसकी संरचना.—लागू नहीं ।

13. भर्ती करने में जिन परिस्थितियों में हिमाचल प्रदेश लो सेवा आयोग से परामर्श किया जायेगा.—जैसा विधि द्वारा अपेक्षित है ।

14. सीधी भर्ती के लिए अनिवार्य अपेक्षा.—किसी सेवा या पद नियुक्ति के लिए अभ्यर्थी का भारत का नागरिक होना आवश्यक है ।

15. सीधी भर्ती द्वारा पद पर नियुक्ति के लिए चयन.—सीधी भर्ती के मामले में पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा, यदि भर्ती प्राधिकारी ऐसा करना आवश्यक या समीचीन समझे, तो लिखित परीक्षा या व्यावहारिक परीक्षा के आधार पर किया जाएगा जिसका स्तर/पाठ्यक्रम इत्यादि, भर्ती प्राधिकारण द्वारा अवधारित किया जाएगा :

15—क. संविदा के आधार पर नियुक्ति के लिए पद पर चयन.—इन नियमों में किसी बात के होते हुए भी, पद पर संविदा नियुक्तियों नीचे दिए गए निबन्धों और शर्तों के अध्वधीन की जाएगी:—

I. संकल्पना.—(क) इस पॉलिसी के अधीन हिमाचल प्रदेश राज्यपाल सचिवालय में धोबियों का मेट को संविदा के आधार पर प्रारम्भ में एक वर्ष के लिए लगाया जाएगा, जिसे वर्षानुवर्ष आधार पर आगे बढ़ाया जा सकेगा ।

(ख) **पद का हिमाचल प्रदेश अधीनस्थ सेवाएं चयन बोर्ड के कार्यक्षेत्र से बाहर होना.—**सचिव, राज्यपाल, रिक्त पदों को संविदा के आधार पर भरने के लिए सरकार का अनुमोदन प्राप्त करने के पश्चात्, रिक्त पदों के ब्यौरे, कम से कम दो अग्रणी समाचार पत्रों में प्रकाशित करेगा और इन नियमों में यथाविहित शैक्षिक अहर्ताएं और अन्य पात्रता शर्तों को पूरा करने वाले अभ्यर्थियों से आवेदन आमंत्रित करेगा ।

(ग) चयन इन नियमों में विहित पात्रता शर्तों के अनुसार किया जाएगा ।

II. संविदात्मक उपलब्धियां.—संविदा के आधार नियुक्त धोबियों के मेटे को 6200/—रुपए की समेकित नियत संविदात्मक रकम (जो पे बैंड के न्यूनतम जमा ग्रेड पे के बराबर होगी) प्रतिमास संदत्त की जाएगी । यदि संविदा में एक वर्ष से अधिक की बढ़ोतरी की जाती है तो पश्चातवर्ती वर्ष (वर्षों) के लिए संविदात्मक उपलब्धियों में पद के पे बैंड के न्यूनतम+ग्रेड पे का तीन प्रतिशत के बराबर की रकम वार्षिक वृद्धि के रूप में अनुज्ञात की जाएगी ।

III. नियुक्ति/अनुशासन प्राधिकारी.—सचिव, राज्यपाल, हिमाचल प्रदेश, नियुक्ति और अनुशासन प्राधिकारी होगा ।

IV. चयन प्रक्रिया.—संविदा नियुक्ति की दशा में पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा । यदि आवश्यक या समीचीन समझा जाए तो लिखित परीक्षा या व्यावहारिक परीक्षा के आधार पर किया जाएगा, जिसका स्तर/पाठ्यक्रम इत्यादि सम्बद्ध भर्ती प्राधिकारी अर्थात् सचिव, राज्यपाल द्वारा अवधारित किया जाएगा ।

V. संविदात्मक नियुक्तियों के लिए चयन समिति.—जैसी सम्बद्ध भर्ती अभिकरण अर्थात् सचिव, राज्यपाल, द्वारा समय-समय पर गठित की जाए ।

VI. करार.—अभ्यर्थी को, चयन के पश्चात् इन नियमों से संलग्न उपाबन्ध "ख" के अनुसार करार हस्ताक्षरित करना होगा ।

VII. निबन्धन और शर्तें.—(क) संविदा के आधार पर नियुक्त व्यक्ति को 6200/—रुपए की नियत संविदात्मक रकम प्रतिमास संदत्त की जाएगी (जो पे बैंड के न्यूनतम जमा ग्रेड पे के बराबर होगी)। संविदा पर नियुक्त व्यक्ति आगे बढ़ाए गए वर्ष/वर्षों के लिए संविदात्मक रकम में पे बैंड के न्यूनतम जमा ग्रेड पे का तीन प्रतिशत के बराबर वार्षिक वृद्धि का हकदार होगा और अन्य कोई सम्बद्ध प्रसुविधाएं, जैसे वरिष्ठ/चयन वेतनमान आदि नहीं दिया जाएगा ।

(ख) संविदा पर नियुक्त व्यक्ति की सेवा पूर्णतया अस्थाई आधार पर होगी । यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है, तो नियुक्ति समाप्त किए जाने के लिए दायी होगी ।

(ग) संविदा पर नियुक्त व्यक्ति एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश का हकदार होगा । यह अवकाश एक वर्ष तक सूचित किया जा सकेगा । संविदा पर नियुक्त व्यक्ति को किसी भी प्रकार का अन्य कोई अवकाश अनुज्ञात नहीं होगा । वह चिकित्सा प्रतिपूर्ति और एल.टी.सी इत्यादि के लिए भी हकदार नहीं होगा । केवल प्रसूति अवकाश, नियमानुसार दिया जाएगा ।

(घ) नियन्त्रक अधिकारी के अनुमोदन के बिना सेवा से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान (समापन) हो जाएगा । संविदा पर नियुक्त व्यक्ति कर्त्तव्य (ड्यूटी) से अनुपस्थिति की अवधि के लिए भी संविदात्मक रकम का हकदार नहीं होगा ।

(ङ.) संविदा पर नियुक्त कर्मचारी, जिसने तैनाती के एक स्थान पर पांच वर्ष का कार्यकाल पूर्ण कर लिया है, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो, आवश्यकता के आधार पर स्थानान्तरण हेतु पात्र होगा ।

(च) चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्य प्रमाण पत्र प्रस्तुत करना होगा । बारह सप्ताह से अधिक गर्भवती महिला प्रसव होने तक अस्थाई तौर पर अनुपयुक्त बनी रहेगी । महिला अभ्यर्थी का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाएगा ।

(छ) संविदा पर नियुक्त व्यक्ति का यदि अपने पदीय कर्त्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर जैसी नियमित प्रतिस्थानी कर्मचारियों को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा ।

(ज) नियमित कर्मचारियों की दशा में यथा लागू सेवा नियमों के उपबन्ध, जैसे एफ0आर0, एस0आर0, छुट्टी नियम, साधारण भविष्य निधि नियम, पेंशन नियम तथा आचरण नियम आदि संविदा पर नियुक्त व्यक्तियों की दशा में लागू नहीं होंगे । वे इस स्तम्भ में यथावर्णित उपलब्धियों आदि के लिए हकदार होंगे ।

16. आरक्षण.—उक्त सेवा में नियुक्ति हिमाचल प्रदेश सरकार द्वारा समय-समय पर अनुसूचित जातियों/अनुसूचित जन-जातियों/पिछड़े वर्गों और अन्य प्रवर्ग के व्यक्तियों के लिए सेवा में आरक्षण की बावत जारी किए गए आदेशों के, अधीन होगी ।

17. विभागीय परीक्षा.—लागू नहीं ।

18. शिथिल करने की शक्ति.—जहां राज्य सरकार की यह राय हो कि ऐसा करना आवश्यक या समीचीन है, वहां वह, कारणों को लिखित में अभिलिखित करके, आदेश द्वारा, इन नियमों, के किन्हीं उपबन्धों को किसी वर्ग या व्यक्तियों के प्रवर्ग या पदों की बावत, शिथिल कर सकेगी ।

धोबियों का मे और हिमाचल प्रदेश सरकार के मध्य, सचिव राज्यपाल, हिमाचल प्रदेश के माध्यम से निष्पादित की जाने वाली संविदा/करार का प्ररूप यह करार श्री/श्रीमति.....पुत्र/पुत्री श्री.....निवासी.....संविदा पर नियुक्त व्यक्ति (जिसे इसमें इसके पश्चात् प्रथम पक्षकार कहा गया है) और हिमाचल प्रदेश की राज्यपाल के मध्य, सचिव राज्यपाल हिमाचल प्रदेश (जिसे इसमें इसके पश्चात् द्वितीय पक्षकार कहा गया है) के माध्यम से आज तारीख को.....किया गया ।

द्वितीय पक्षकार ने उपरोक्त प्रथम पक्षकार को लगाया है और प्रथम पक्षकार ने धोबियों का मेट के रूप में संविदा के आधार पर निम्नलिखित निबन्धन और शर्तों पर सेवा करने के लिए सहमति दी है :—

1. यह कि प्रथम पक्षकार धोबियों का मे के रूप मेंसे प्रारम्भ होने और.....को समाप्त होने वाले दिन तक एक वर्ष की अवधि के लिए द्वितीय पक्षकार की सेवा में रहेगा । यह विनिर्दिष्ट रूप से उल्लिखित किया गया है और दोनों पक्षकारों द्वारा करार पाया गया है कि प्रथम पक्षकार की द्वितीय पक्षकार के साथ संविदा, आखिरी कार्यदिवस को अर्थात्.....दिन को स्वयंमेव ही पर्यवसित (समाप्त) समझी जाएगी तथा सूचना नोटिस आवश्यक नहीं होगा ।
2. प्रथम पक्षकार की संविदात्मक रकम 6200/— रुपए प्रतिमास होगी ।
3. प्रथम पक्षकार की सेवा पूर्णतया अस्थाई आधार पर होगी । यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है या यदि नियमित पदधारी उस रिक्ति के विरुद्ध नियुक्त/तैनात कर दिया जाता है, जिसके लिए प्रथम पक्षकार को संविदा पर लगाया गया है, तो नियुक्ति पर्यवसित (समाप्त) की जाने के लिए दायी होगी ।
4. संविदात्मक नियुक्ति, किसी भी दशा में सेवा में, पदधारी को नियमितीकरण के लिए कोई अधिकार प्रदान नहीं करेगी ।
5. संविदा पर नियुक्त धोबियों के मेट एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश का हकदार होगा। यह अवकाश एक वर्ष तक संचित किया जा सकेगा। संविदा पर नियुक्त धोबियों का मेट को किसी भी प्रकार का अन्य कोई अवकाश अनुज्ञात नहीं होगा। वह चिकित्सा प्रतिपूर्ति और एल.टी.सी इत्यादि के लिए भी हकदार नहीं होगा/होगी। केवल प्रसूति अवकाश नियमानुसार दिया जाएगा ।
6. नियन्त्रक अधिकारी के अनुमोदन के बिना कर्तव्यों से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यवसान (समापन) हो जाएगा । संविदा पर नियुक्त धोबियों का मे कर्तव्य (ड्युटी) से अनुपस्थिति की अवधि के लिए संविदात्मक रकम लेने का हकदार नहीं होगा ।
7. संविदा पर नियुक्त व्यक्ति, जिसने तैनाती के एक थान पर पाचं वर्ष का कार्यकाल पूर्ण कर लिया है, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो आवश्यकता के आधार पर स्थानान्तरण हेतु पात्र होगा ।
8. चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्य प्रमाण-पत्र प्रस्तुत करना होगा । महिला अभ्यर्थियों की दशा में, बारह सप्ताह से अधिक की गर्भावस्था प्रसव होने तक उसे अस्थाई तौर पर अनुपयुक्त बना देगी । महिला अभ्यर्थियों का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाना चाहिए ।
9. संविदा पर नियुक्त व्यक्ति का यदि अपने पदीय कर्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर जैसी नियमित प्रतिस्थानी कर्मचारी को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी ।

10. संविदा पर नियुक्त व्यक्ति (व्यक्तियों) को सामूहिक बीमा योजना के साथ-साथ जी.पी.एफ./ई0पी0एफ0 भी लागू नहीं होगा ।

इसके साक्ष्यस्वरूप, प्रथम पक्षकार और द्वितीय पक्षकार ने साक्षियों की उपस्थिति में इसमें सर्वप्रथम उल्लिखित तारीख को अपने-अपने हस्ताक्षर कर दिए हैं ।

साक्षियों की उपस्थिति में:

1.
.....
.....
नाम व पूरा पता ।

2.
.....
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प्रथम पक्षकार के हस्ताक्षर

साक्षियों की उपस्थिति में:

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द्वितीय पक्षकार के हस्ताक्षर

[Authoritative English text of this Department's Notification No. GAB-A(3)-1/2004 Dated 29-6- 2010 as required under clause(3) of Article 348 of the Constitution of India].

**GENERAL ADMINISTRATION DEPARTMENT
B-Section**

NOTIFICATION

Shimla-2, the 29 June, 2010

No. GAB-A(3)-1/2004.—In exercise of the powers conferred by proviso to Article 309 of the constitution of India, the Governor, Himachal Pradesh, is pleased to make the following Recruitment and Promotion Rules for the post of **Dhobi's Mate**, Class-IV, (Non-Gazetted) in Himachal Pradesh Governor's Secretariat (Household) as per Annexure "A" attached to this notification namely:

1. **Short title and Commencement.**—(1) These rules may be called the Himachal Pradesh Governor's Secretariat Dhobi's Mate, Class-IV (Non-Gazetted) Recruitment and Promotion Rules, 2010.

(2) These rules shall come into force from the date of publication in the Rajpatra, Himachal Pradesh.

2. Repeal and Savings.—(1) The Himachal Pradesh Governor's Secretariat Dhobi's Mate, Class-IV (Non-Gazetted) Recruitment and Promotion Rules 2009 notified vide this Department's Notification of even number Dated 24-3-2009 are hereby repealed.

(2) Notwithstanding such repeal, any appointment made or anything done or any action taken under the rules so repealed under sub rule 2(1) supra shall be deemed to have been made validly under these Rules.

By order,
Sd/-
Secretary.

Annexure-“A”

RECRUITMENT AND PROMOTION RULES FOR THE POST OF DHOBI'S MATE (CLASS-IV, NON-GAZETTED) IN THE OFFICE OF GOVERNOR'S SECRETARIAT (HOUSEHOLD) HIMACHAL PRADESH

1. **Name of the post.**—Dhobi's Mate
2. **Number of posts.**—1 (One)
3. **Classification.**—Class-IV (Non-Gazetted)
4. **Scale of Pay.**—(i) *Pay Scale for Regular Incumbents.*—Pay Band in the Scale of Rs.4900-10680 + Rs.1300 as Grade Pay
(ii) *Emoluments for Contract employees.*—Rs 6200/- per month as per details given in Col. 15-A.
5. **Whether Selection post or non-selection post.**—N.A.
6. **Age for direct recruitment.**—Between 18 & 45 years.

Provided that the upper age limit for direct recruits will not be applicable to the candidates already in service of the government including those who have been appointed on adhoc or on contract basis:

Provided further that if a candidate appointed on adhoc basis had become overage on the date when he was appointed as such he shall not be eligible for any relaxation in the prescribed age-limit by virtue of his adhoc or contract appointment.

Provided further that upper age limit is relaxable for Scheduled Castes/Scheduled Tribes/Other Categories of person to the extent permissible under the general or special order(s) of the Himachal Pradesh Government.

Provided further that employees of all the Public Sector Corporations and Autonomous Bodies who happened to be government servants before absorption in Public Sector

Corporations/Autonomous Bodies at the time of initial constitution of such Corporation/Autonomous Bodies shall be allowed age concession in direct recruitment as admissible to government servants. This concession will not, however, be admissible to such staff of the Public Sector Corporations/ Autonomous Bodies who were/are subsequently appointed by such Corporation /Autonomous Bodies and who are/were finally absorbed in the service of such Corporations/Autonomous Bodies after initial constitution of the Public Sector Corporations/Autonomous Bodies.

(5) Age limit for direct recruitment will be reckoned on the first day of the year in which the post(s) is/are advertised for inviting applications or notified to the Employment Exchange.

(6) Age and experience in the case of direct recruitment relaxable at the discretion of the recruiting agency in case the candidate is otherwise well qualified.

7. Minimum Educational & other qualifications required for direct recruits.—A. ESSENTIAL.—(1) should be middle pass or its equivalent from a recognized Board of School Education / Institution.

(2) Knowledge of detergent etc. for washing the Clothes.

B. DESIRABLE QUALIFICATION.—Knowledge of customs, manner and dialects of Himachal Pradesh and suitability for appointment in peculiar condition prevailing in the Himachal Pradesh.

8. Whether age & educational qualifications prescribed for direct recruits will apply in the case of the promotees.—Not Applicable.

9. Period of probation if any.—Two years subject to such further extension for a period not exceeding one year as may be ordered by the competent authority in special circumstances and reasons to be recorded in writing.

10. Method of recruitment whether by direct recruitment or by promotion, deputation, Transfer and the percentage of posts to be filled in by various methods.—100% by direct recruitment on regular basis or recruitment on contract basis as the case may be. The contract employees will get emoluments as given in Col. 15-A and will be governed by service conditions as specified in the said column.

11. In case of recruitment by promotion, deputation, transfer grade from which promotion/deputation/transfer is to be made.—N.A.

12. If a departmental Promotion Committee exists, what is its composition.—N.A.

13. Circumstances under which the H.P.P.S.C. is to be consulted in making recruitment.—As required under the Law.

14. Essential requirement for a direct recruitment.—A candidate for appointment to any service or post must be citizen of India.

15. Selection for appointment to post by direct recruitment.—Selection for appointment to the post in the case of direct recruitment shall be made on the basis of viva-voce test if the recruiting Authority so consider necessary or expedient by a written test or practical test, the standard/syllabus etc. of which will be determined by the recruiting Authority.

15-A. Selection for appointment for the post by contract appointment.—Notwithstanding anything contained in these rules, contract appointments to the post will be made subject to the terms and conditions given below:-

(I) CONCEPT.—(a) Under the policy the **Dhobi's Mate** in the Department of Governor's Secretariat, H.P. will be engaged on contract basis initially for one year, which may be extendable on year to year basis.

(b) **POST FALLS OUT OF THE PURVIEW OF HPSSB.**—The Secretary to Governor after obtaining the approval of the Government to fill up the posts on contract basis will advertise the details of the vacant posts in atleast two leading News papers and invite applications from candidates having the prescribed qualifications and fulfilling the other eligibility conditions as prescribed in these Rules.

(c) The selection will be made in accordance with the eligibility conditions prescribed in these Rules.

(II) CONTRACTUAL EMOLUMENTS.—The **Dhobi's Mate** appointed on contract basis will be paid consolidated fixed contractual amount @ Rs.6200/-per month (which shall be equal to minimum of Pay band + grade pay). An amount equal to 3% of the minimum of Pay band+ grade pay of the post as annual increase in the contractual emoluments for the subsequent year(s) will be allowed if contract is extended beyond one year.

(III) APPOINTING / DISCIPLINARY AUTHORITY.—The Secretary to Governor H.P. will be appointing and disciplinary authority.

(IV) SELECTION PROCESS.—Selection for appointment to the post in the case of Contract Appointment will be made on the basis of viva-voce test or if consider necessary or expedient by a written test or practical test the standard/syllabus etc. of which will be determined by the concerned recruiting authority i.e Secretary to Governor.

(V) COMMITTEE FOR SELECTION OF CONTRACTUAL APPOINTMENTS.—As may be constituted by the concerned recruiting agency i.e. Secretary to Governor from time to time.

(VI) AGREEMENT.—After selection of a candidate, he/she shall sign an agreement as per **Annexure-B** appended to these Rules.

(VII) TERMS & CONDITIONS.—(a) The contractual appointee will be paid fixed contractual amount @ Rs.6200/-per month(which is equal to the minimum of Pay Band + Grade Pay) The contract appointee will be entitled for increase in contractual amount @ 3% of the minimum of Pay band+Grade Pay of the post for further extended years and no other allied benefits such as seniority /selection scales etc. shall be given.

(b) The service of the Contract Appointee will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found satisfactory.

(c) Contract Appointee will be entitled for one day casual leave after putting one month service. This leave can be accumulated up to one year. No leave of other kind is admissible to the contract appointee. He/she shall not be entitled for medical reimbursement and LTC etc. Only maternity leave will be given as per rules.

(d) Unauthorized absence from the duty without the approval of the controlling officer shall automatically lead to the termination of the contract. Contract Appointee shall not be entitled for contractual amount for the period of absence from duty.

(e) An Official appointed on contract basis who have completed five years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.

(f) Selected candidate will have to submit a certificate of his/her fitness from a Government/ Registered Medical Practitioner. Woman candidate pregnant beyond 12 weeks will stand temporarily unfit till the confinement is over. The Woman candidates will be re-examined for the fitness from an authorized Medical Officer/Practitioner.

(g) Contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to regular counterpart officials at the minimum of pay scale.

(h) Provisions of service rules like FR SR, Leave Rules, GPF Rules, Pension Rules & Conduct Rules etc. as are applicable in case of regular employees will not be applicable in case of contract appointees. They will be entitled for emoluments etc. as detailed in this Column.

16. Reservation.—The appointment to the service shall be subject to orders regarding reservation in the service for Scheduled castes/ Scheduled Tribes /other Backward Classes/Other Categories of persons issued by the Himachal Pradesh Govt. from time to time.

17. Departmental Examination.—Not applicable

18. Powers to relax.—Where the State Govt. is of the opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing and relax any of the provisions of these Rules with respect to any class or category or persons or posts.

Annexure-B

Form of contract/agreement to be executed between the Dhobi's Mate and the Government of Himachal Pradesh through Secretary to Governor, Himachal Pradesh

This agreement is made on this -----day of -----in the year between Shri/Smt.-----S/OD/O Shri -----R/O-----contract appointee (hereinafter called the FIRST PARTY) AND the Governor of Himachal Pradesh through Secretary to Governor, Himachal Pradesh (hereinafter called the SECOND PARTY). Whereas the SECOND PARTY has engaged the aforesaid FIRST PARTY and the FIRST PARTY has agreed to serve as a Beldar on contract basis on the following terms and conditions:-

1. That the FIRST PARTY shall remain in the service of the SECOND PARTY as a **Dhobi's Mate** for a period of one year commencing on day of and the ending on the day of ----- It is specifically mentioned and agreed upon by both the parties that the contract of the FIRST PARTY with SECOND PARTY shall ipso-facto stand terminated on the last working day i.e. on -----And information notice shall not be necessary.
2. The contractual amount of the FIRST PARTY will be Rs. **6200/-** per month.
3. The service of the FIRST PARTY will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found good or if a regular incumbent is appointed /posted against the vacancy for which the first party was engaged on contract.

4. The contractual appointment shall not confer any right to incumbent for the regularization of service at any stage.
5. Contractual **Dhobi's Mate** will be entitled for one day casual leave after putting in one month service. This leave can be accumulated upto one year. No leave of any kind is admissible to the contractual **Dhobi's Mate** He will not be entitled for medical reimbursement and LTC etc. Only maternity leave will be given as per rules.
6. Unauthorized absence from the duty without the approval of the controlling Officer shall automatically lead to the termination of the contract. A contractual **Dhobi's Mate** will not be entitled for contractual amount for the period of absence from duty.
7. An Official appointed on contract basis who have completed five years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.
8. Selected candidate will have to submit a certificate of his/her fitness from a Government/Registered Medical Practitioner. In case of Women candidates pregnant beyond twelve weeks will render her temporarily unfit till the confinement is over. The women candidate should be re-examined for fitness from an authorized Medical Officer/Practitioner.
9. Contract appointee shall be entitled to TA/DA if required to go on tour in connection with his official duties at the same rate as applicable to regular counterpart official at the minimum of pay scale.
10. The Employees Group Insurance Scheme as well as EPF/GPF will not be applicable to the contractual appointee(s).

IN WITNESS the FIRST PARTY AND SECOND PARTY has herein to set their hands the day, month and year first, above written.

IN THE PRESENCE OF WITNESS:

1 _____

 (Name and full address)

2. _____

 (Name and Full Address)

(Signature of the FIRST PARTY)

IN THE PRESENCE OF WITNESS:

1 _____

 (Name and full address)

2. _____

 (Name and Full Address)

(Signature of the SECONDPARTY)